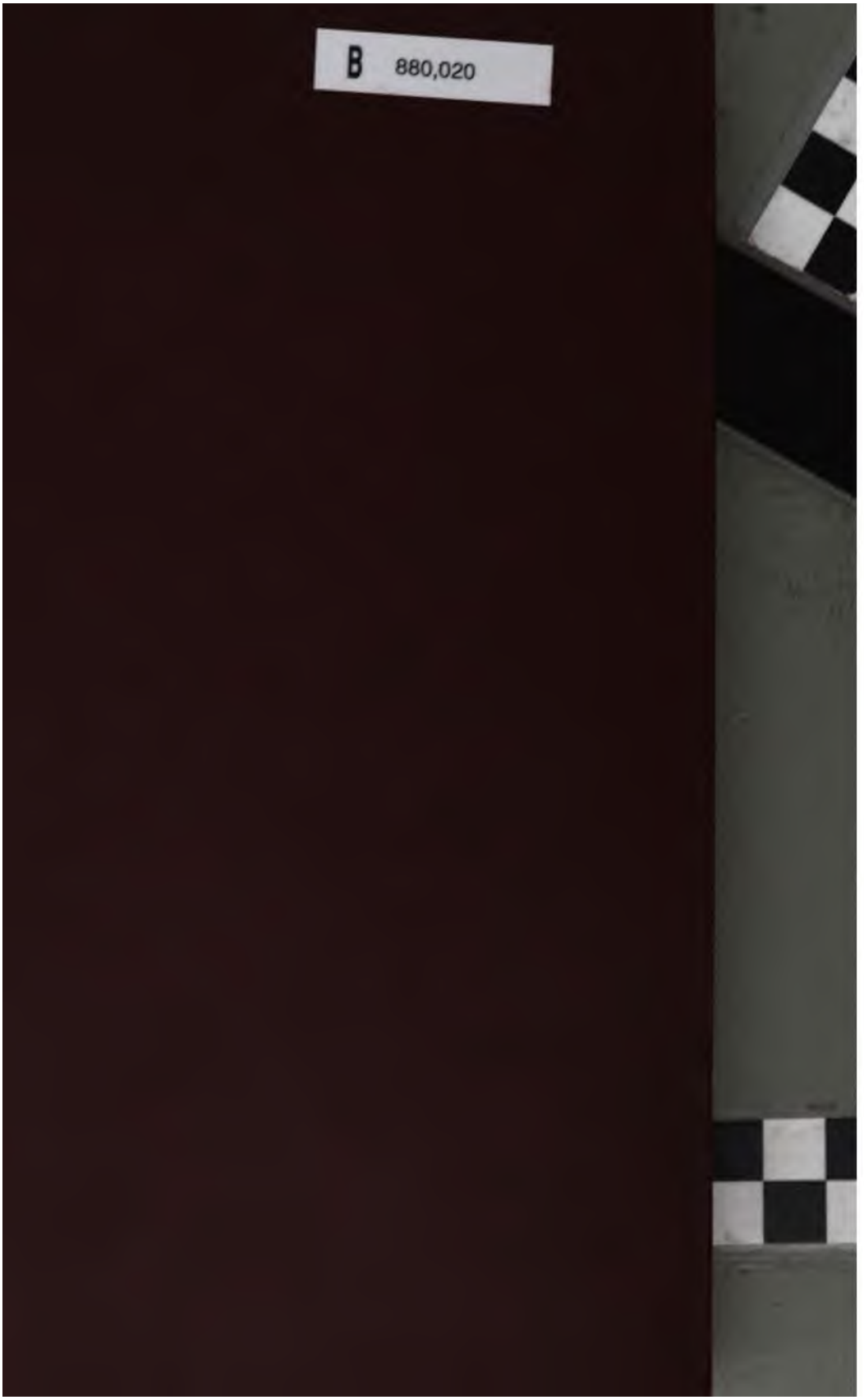
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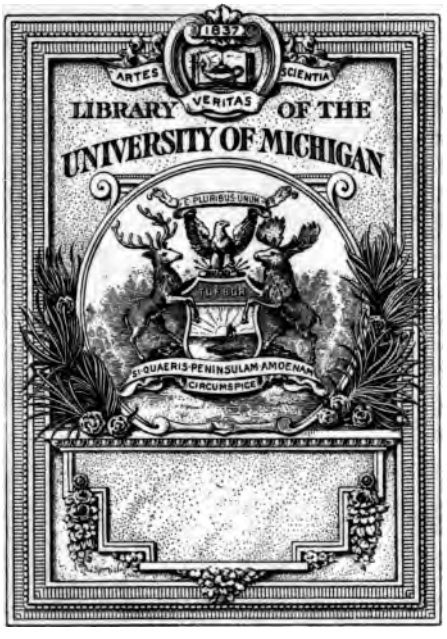

Proceedings

of the

American Political Science Association

at its

Sixth Annual Meeting

held at New York City, December 27-31, 1909

The Waverly Press
Baltimore, Md.
1910

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CONSTITUTION OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

ARTICLE I—NAME

This Association shall be known as THE AMERICAN POLITICAL SCIENCE ASSOCIATION.

ARTICLE II—OBJECT

The encouragement of the scientific study of politics, public law, administration and diplomacy.

The Association as such will not assume a partisan position upon any question of practical politics, nor commit its members to any position thereupon.

ARTICLE III—MEMBERSHIP

Any person may become a member of this Association upon payment of three dollars, and after the first year may continue such by paying an annual fee of three dollars. By a single payment of fifty dollars any person may become a life member, exempt from annual dues.

Honorary life members, exempt from the payment of dues, may be elected by the Association, but no more than two such members may be elected during any one year [adopted December 30, 1907].

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

ARTICLE IV—OFFICERS

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary and a Treasurer, who shall be elected annually, and of an Executive Council consisting ex officio of the officers above mentioned and ten elected members, whose term of office shall be two years, except that of those selected at the first election, five shall serve for but one year.

All officers shall be nominated by a Nomination Committee composed of five members appointed by the Executive Council, except that the officers for the first year shall be nominated by a committee of three to be appointed by the chairman of the meeting at which this Constitution is adopted.

All officers shall be elected by a majority vote of the members of the Association present at the meeting at which the elections are had.

ARTICLE V—DUTIES OF OFFICERS

The President of the Association shall preside at all meetings of the Association and of the Executive Council, and shall perform such other duties as the Executive Council may assign to him. In his absence his duties shall devolve successively

The Secretary shall keep the records of the Association and perform such other duties as the Executive Council may assign to him.

The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Executive Council.

The Executive Council shall have charge of the general interests of the Association, shall call regular and special meetings of the Association, appropriate money, appoint committees and their chairmen, with appropriate powers, and in general possess the governing power in the Association, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation or failure to elect, such appointees to hold office until the next annual election of officers.

Five members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

Ten members shall constitute a quorum of the Association and a majority vote of those members in attendance shall control its decisions.

ARTICLE VI—Resolutions

All resolutions to which an objection shall be made shall be referred to the Executive Council for its approval before submission to the vote of the Association.

ARTICLE VII—Amendments

Amendments to this Constitution shall be proposed by the Executive Council and adopted by a majority vote of the members present at any regular or special meeting of the Association.

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REPORT OF THE PROCEEDINGS

of the

SIXTH ANNUAL MEETING

of the

American Political Science Association

By the Secretary

The Sixth Annual Meeting of the American Political Science Association was held at New York City, December 27–31, 1909. The presidential address by Mr. A. Lawrence Lowell, President of Harvard University was entitled The Physiology of Politics, and was published in the February, 1910, issue of the AMERICAN POLITICAL SCIENCE REVIEW, and is not, therefore, republished in this volume. A joint session was held with American Historical Association, the general topic discussed being British Constitutional and Political Development with especial reference to the Centenary of Gladstone. Joint sessions were also held with the American Economic Association and the American Association for Labor Legislation, the topic of the first meeting being the Valuation of Public Service Corporations, of the second, the Relation of the State to Labor. The papers read at these meetings which are not published in full in this volume, are printed in full in the proceedings of the other Associations.

The Secretary of the Association reported a gratifying increase in the membership of the Association, the enrollment at the close of the year exceeding eleven hundred.

The following were elected officers of the Association for the year 1910: President, Woodrow Wilson, President of Princeton University; First Vice-President, Edmund J. James, President of the University of Illinois; Second Vice-President, Professor Albert Bushnell Hart of Harvard University; Third Vice-President, Hon. W. F. Willoughby, Washington, D. C.; Secretary and Treasurer, Professor W. W. Willoughby, Johns Hopkins University. The following were

elected members of the Executive Council, to fill the places of those whose terms of office expired: Prof. F. J. Goodnow, J. H. Latané, J. A. Fairlie, E. C. Merriam, Theodore Woolsey. Professor Fairlie was appointed chairman of the Committee on Programme for the seventh annual meeting of the Association, with power to appoint the other members of the committee. The place of meeting of the Association in December, 1910, was not determined, the matter being left in the hands of the Executive Council.

REPORT OF THE TREASURER FOR THE YEAR 1909

RECEIPTS.

Balance on hand, December 30, 1908	$89.08
Fees, life membership	450.00
Annual dues	2669.50
Subscriptions and publications sold	509.18
Loan	349.96
Total receipts	$4067.72

EXPENDITURES.

Legislative notes	$100.00
Clerical Assistance to Secretary and Treasurer	480.00
Postage and Office Expenses of Secty. and Treasurer	386.13
Printing and Stationery	3001.79
Miscellaneous	46.00
Total expenditures	$4013.92
Balance on hand Dec. 25, 1909	53.80
	$4067.72

Submitted, December 25, 1909
W. W. WILLOUGHBY.

Audited and found correct:
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BY EDWARD A. HARRIMAN
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The question of the control of corporations by the government is substantially the question of the control of business by the government, since the most important business is now carried on by corporate organizations. How far it is desirable that the state should control business is a question regarding which there is a countless variety of views. Nothing is more obvious, however, than the fact that there is a strong popular demand for extension of the control of business, especially of corporate business, by both state and national governments. The reason for this demand is apparent. It is a political axiom that the power of the sovereign must be greater than the power of any subject, otherwise the subject in his turn becomes the sovereign. It is apparent, however, from any historical observation that the nearer a subject approaches to the sovereign in power, the less stable becomes the political equilibrium. When the Duke of Burgundy's power approached that of the King of France, the title of king was worth little more than that of duke. When the last of the barons ceased to be a king-maker in England, the English crown became a more valuable heirloom. These are well-known instances of the relation of powerful personal subjects to personal sovereigns, but the political principle is not limited in its application to cases where sovereign and subject are man and man. The national sovereignty established by our federal constitution has never been seriously threatened by any single state, but when a combination of states organized the Confederate States of America, the question of law as to the constitutional right of the federal government to coerce the states resolved itself into a question of fact as to whether the military power of the states which supported the national sovereign was greater than that of those states which were powerful enough to resist the national sovereignty for four years.

Hitherto the subjects who have been powerful enough to threaten their sovereign have been masters of a portion of the territory under the dominion of that sovereign. The rights of the barons, both in France and in England, were always connected with th e lordship over certain territory. The power wielded by the Confederate States of America was territorial in its extent. At the present time, however, a new division of power has been made. The most powerful subjects of the United States of America now control, not certain territory, but certain kinds of business. In place of magnates with a territorial designation, like the Duke of Burgundy or the Earl of Warwick, we have magnates who are popularly called coal barons and railroad kings. Our law, of course, knows no titles; but the popular use of titles with a geological, instead of a geographical significance, is worthy of notice. Instead of great domains, our magnates control great corporations with budgets of royal magnitude. On the subject of these corporations there is loud popular clamor, much of which is unreasonable and unreasoning. It is not, however, unreasonable that a democracy which has erected a national sovereignty, based on democratic principles, should have some fear as to the power of that sovereignty to control subjects so powerful as our great corporations. It is interesting in this connection to note that while the dangers from immense aggregations of capital under corporate control are pointed out on every hand, little attention is paid to the fact that other subjects than the corporations have become so powerful as to threaten our national sovereign. Although the doctrine has as yet found no support in the courts, it has been seriously urged by counsel in the Debs case and in the Gompers case that the worthy end of elevating the condition of labor, justifies, and therefore renders lawful, all means which in the opinion of labor organizations will aid that end. It is also worthy of note that in our sister republic of France, where, as here, liberty, equality, and fraternity are the ideals of government, organizations of laborers have threatened the welfare of the state, even though those laborers were employes in the service of the state itself. In the control of corporations, therefore, including under this broad head all great associations of capital or of labor, whether technically incorporated or not, lies the great problem of today.

By the adoption of the arbitrary theory of the separation of powers, for which the reason seemed more obvious in the eighteenth century than in the twentieth, our Constitution provides for a division of

governmental power between the executive, the legislative, and the judicial departments. Obviously, therefore, the control of corporations must be either executive, legislative, or judicial in its character. Judicial control of corporations is comparatively simple. If a corporation undertakes to exercise a franchise to which it is not entitled, there is the old prerogative writ of *quo warranto*, or the corresponding information, the effect of which, when prosecuted to judgment, is a judgment of ouster preventing the corporation from further exercise of that franchise. If a particular and definite duty is imposed upon a corporation, there is also the old prerogative writ of *mandamus* to compel the corporation to perform such duty. If the corporation is guilty of a criminal act, it is subject to trial and punishment as a criminal. If it invades the rights of others in such a manner that the person injured has no adequate redress at law, the corporation, like other persons, may be enjoined from such conduct by a court of equity. In certain cases, also, the state itself, or the United States, as the case may be, may obtain an injunction against illegal action by a corporation, the tendency of modern legislation like the anti-trust acts being to widen the sphere of equity jurisdiction in regard to illegal acts of corporations. If a corporation is guilty of such entire abuse of its franchises as to render it subject to capital punishment, then it may be dissolved either by the old writ of *quo warranto*, or, under modern statutes, and in certain cases, by the decree of a court of equity. Such, in brief, is the nature of the judicial control of corporations.

Legislation means, strictly speaking, the passing of laws. By the enactment of rules of conduct for corporations, therefore, the legislative body may and does exercise legislative control over corporations. Such legislation ordinarily relates to the conditions upon which individuals may acquire a corporate franchise, and the regulation of their relations as members of the corporation. In the case of public service corporations, the principal matters to which legislation is devoted are the character of the service to be rendered, and the charges to be made for that service. The very nature of parliamentary government, however, is such that it is practically impossible for the details of business to be regulated by statute.

The executive control of corporations, strictly speaking, is limited to the carrying out of existing laws. Perhaps the most conpicuous instance of executive control is the control exercised by the comptroller of the currency over national banks.

A comparison of the methods by which the governmental control is exercised as above stated, with the business methods of the most successful corporations presents an interesting contrast. From the standpoint of the government, it will be seen that normally there are three operations necessary to produce the actual result of controlling the corporation: first, the enactment of a statute laying down the rule by which the corporation is to be guided; second, the action of the executive in investigating the conduct of the corporation with regard to that particular rule; and, third, the action of the court after due and proper litigation at the instance of the executive, in ordering the corporation to obey that rule, or punishing it for its disobedience; to which may be added a fourth step, namely, the enforcement by the executive of the judicial decree. This is a solemn and elaborate process, and by this method in the course of a given number of years after the people have elected legislators for the purpose of accomplishing a particular result, that result may be accomplished. Compare with this one most of the successful cases of administration of an immense railroad system. In that case, which is well known, the stockholders elected a board of directors to manage affairs. The board of directors chose from their number an executive committee. The executive committee practically gave a power of attorney to the president of the corporation to do what he thought best. The result was that the control of that great railway system was vested in one man, who could act as fast as he could think. Whatever may have been the attitude of the public in this matter, it is clear that this method of management was satisfactory to the stockholders of the corporation. The contrast between the active management of a railway by the instantaneous response of all its machinery to the will of a single man, and the control of that same railway by the elaborate governmental process above mentioned, is significant. But this elaborate governmental process long ago appeared insufficient and inadequate to deal with such business as affects the public service. Our parliamentary bodies, being incapable of dealing in detail with the questions involved, have established numerous administrative commissions, both state and national. There are no more interesting questions in our law today than those affecting the status of these different administrative bodies. Whether their functions are legislative, executive, or judicial; whether they combine all of these functions; how far such functions can be imposed upon them; and how far their action has any element of finality, are

questions which have taxed, and sometimes over-taxed the learning and wisdom of our ablest courts. It must be apparent to any observer that the object of these commissions, generally speaking, is administrative, that is, to protect the interest of the public in the management of the business over which the commission is given control, and to exercise that protection by such methods as are appropriate and reasonable. It is almost impossible, however, for the jurist to untangle the composed decisions which have arisen from the failure to recognize that the terms "legislative," "executive," and "judicial" fail to describe the whole sphere of governmental activity. We may tell an intelligent student that the act of the government through one of its agencies in ordering two trains a day to run to Cranberry Centre instead of one is a legislative act, and that the act of the postmaster-general in ordering two mails a day instead of one to be delivered at Cranberry Centre, is an executive act, but we ought not to be too much surprised if he fails to understand what we are talking about. It would be an interesting study to trace the development of the term "administrative" in our American reports. In a recent decision in Connecticut relating to the constitutionality of an act authorizing an appeal from the railroad commissioners to the superior court on the question of a plan for the elimination of a grade crossing, the court held

> that the board of railroad commissioners is an administrative body, that the subject-matter of its action in the proceedings appealed from was purely administrative, and that the proceedings before it and its order therein were also administrative and in no sense judicial,

and therefore held that the act authorizing the appeal was unconstitutional. The constitution on which this decision was based does not use the term "administrative." It is interesting, therefore, to note that while the constitution prohibits the exercise of executive or legislative power by the judicial department, the court holds that the judicial department cannot exercise administrative powers, of which no mention whatever is made in the constitution. This construction of the Connecticut constitution was established in 1897 by the opinion of three judges against two, Judge Baldwin, now chief justice, writing a very able dissenting opinion. Virginia, on the other hand, has created a corporation commission with legislative, executive and judicial powers, and has made the Supreme Court of the state an administrative court in the proper sense, as distinguished from a judicial tribunal, for the review of the actions of the corpora-

tion commission. Connecticut and Virginia, therefore, represent apparently the two extremes of constitutional attitude toward these administrative commissions. Just where the interstate commerce commission stands under the Hepburn act, is not quite clear. In a recent article Mr. H. D. Newcomb says:

What may be called the administrative theory of the new law asserts that for the mechanism for enforcement thus defined, (by the previous act), the Hepburn law attempts to substitute a sort of advance legislative acceptance of an indefinite series of blank drafts, containing only the maker's name, to be filled out at discretion by the interstate commerce commission, which is thus empowered to draw at will upon the reservoir of federal power over railway rates and methods.

Mr. Newcomb takes the position that the commission cannot have legislative power because legislative power cannot be delegated. On this point, however, we have opposed to his view not simply the opinions of the members of the commission themselves, but also more than one recent decision of the supreme court of the United States. In the case of the interstate commerce commission vs, The Cincinnati, New Orleans & Pacific R. R., 176 U. S. 479, 494, the court said:

Congress might itself prescribe the rates; or it might commit to some subordinate tribunal this duty; or it might leave with the companies the right to fix rates, subject to regulations and restrictions as well as to that rule which is as old as the existence of common carriers, to wit: that the rates must be reasonable.

In the recent case of the Home Telephone Co., vs. Los Angeles, 211 U. S. 265, 278, the court says, that

Rate regulation is purely a legislative function, even when exercised by a subordinate body upon which it is conferred.

In the case of the Honolulu Rebate & Transit Co. vs. Hawaii, 211 U. S. 282, the court says:

The power of regulation (of carriers) is a power legislative in its character and may be exercised directly by the legislature itself. But the legislature may delegate to an administrative body the execution in detail of the legislative power of regulation.

In that case the court held that the primary duty of a traction company

is to operate a sufficient number of cars to meet the public convenience. If the company itself complies with this duty by just and reasonable regulations of its own, it is enough.

Under the legislation of Hawaii it was held that upon the failure of the company to comply with this duty, an administrative official might issue regulations binding on the company with reference to the operation of its cars.

Judge Cooley in his work on *Constitutional Limitations*, (7th edition, page 163), says that

> one of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority.

It seems unfortunate that by applying the term "legislative function" to the action of an administrative body in regulating corporations, this constituional maxim should be rendered unintelligible. In the case of the interstate commerce commission vs. Cincinnati, etc. Railway Co., 167 U. S. 479, 495, the court said that

> administrative control over railroads through boards of commissions was no new thing.

The term "administrative control" there used by the court, has been used in the title of this paper, and seems to express the actual relation of the state to corporations far better than the term "legislative "or "executive." As a matter of logic-chopping, if the powers of the state are all either legislative, executive or judicial, the term "administrative" has no meaning unless it refers to a combination of these powers, which theoretically is a constitutional impossibility.

The development of American industry and commerce has hitherto taken place under laws which have left to the corporations the determination in the first instance, as the court says in the Honolulu case, of what are the just and reasonable regulations to enable those corporations to comply with their duty to the public. As the result of this method of procedure, great triumphs have been achieved in the organization and conduct of business. Popular dissatisfaction with the distribution of the rewards of these economic victories, and to a far greater extent with the political power exercised by the corporations, has led to a demand for much stricter control and regulation by the states and by the United States. Active and efficient control by a parliamentary body through statutes being impossible, there has been a recent demand by a very popular executive for increased executive power, together with some show of indignation at judicial decisions which hold that the powers of administrative officers and tribunals are not as broad as those officers have desired.

Some persons who have enthusiastically supported this demand for the extension of executive power, have failed to realize that the personal popularity of a particular executive offers us no guide as to the permanent power which should be entrusted exclusively to the executive department of the government. Nothing, in fact, is more foreign to a democratic government than the entrusting of arbitrary power to its executive head; and nothing can cause deeper distrust in the law of the land than the idea that that law is to be enforced only against such persons as may be unfortunate enough to encounter the personal hostility of the executive. If greater and more efficient control of corporations is desired, the proper remedy, in a democratic country is not to confer increased power upon the executive, as such, free from all judicial control, however natural may be the executive belief in that remedy. The true remedy is to provide further administrative control, vesting such control in a body of administrative officers who shall combine executive firmness and activity with legislative wisdom and judicial discretion and fairmindedness. It is impossible for a political executive to fill all of these administrative requirements in his own person. It is not, however, impossible that administrative officers should be appointed by the executive who may bring about the desired results. Just as judges in a civilized community are appointed to administer justice between man and man without regard to the political or personal relations of the parties, so administrative officers may be appointed to administer justice between the public and the corporations without regard to the political necessities or beliefs of the appointing power. If it is not yet universally appreciated by the people that administrative officers ought to act just as jairly as judges of the courts, it is because the distinction between the administrative and the political functions of the government has been so sadly neglected in the legal and political education, not simply of the people at large, but of the American bar.

This neglect, however, is being remedied; and that Columbia University should be selected as the place for the discussion of administrative law, is a fitting recognition of the admirable work done by Professor Goodnow in encouraging and facilitating the study of a subject which is of so much practical importance.

Distinct signs of a popular awakening to the necessities of a competent and unpolitical administration of the government are now visible. Civil service reform has already freed vast numbers of minor administrative officials from political control, and there is today a

strong and growing demand for the appointment to administrative commissions of men of the same character and ability as those who are appointed to the bench. The dangers of a political judiciary are generally recognized. It is not too much to hope that the recognition of the dangers of political administrative commissions will become equally general. In such commissions lies the whole future of the administrative control of corporations in this country. The legislature may and will enact laws establishing general principles of conduct governing the relations of the corporations to the public. The courts will when necessary lend their judicial power to aid such administrative commissions on the one hand, or to protect the corporations or the public against their abuse of power, on the other. I have said, "to protect the corporations or the public," for it must not be overlooked that an order of a commission may affect injuriously, not simply the corporation against which that order is directed, but also the public at large. By a change in the basis of railroad rates, a commission may not simply cause loss to the railway companies affected, but may also compel the removal of a particular business affected, from New York to Chicago, or from Boston to Baltimore. In fact, it is an open question whether existing industries are not more liable to injury by changes in railroad rates ordered by commissions than are the railroads themselves; and certainly the task of determining what rate will fairly remunerate the railroad is far easier than that of determining what differential should be allowed as between two Atlantic seaports.

One of the great questions in the administrative control of corporations is the question of the control of the administrative body itself. Great complaint has been made of the interference of the courts with the administration. It seems that there should be some review of administrative action, but the review of that action by litigation in the courts is so tedious a process that impatience is naturally inspired in the public mind. There is, therefore, a demand either that the administrative body shall be independent of all control, or that the review of its acts shall be only by some superior administrative authority. As regards the administrative review of administrative acts, the objections to such review by a hierarchical appeal to an immediate official superior have been pointed out by Mr. Parker. Various controversies in administrative circles might be cited to show that personal and political considerations almost inevitably affect the action of an official superior in reviewing the

action of a subordinate. Mr. Parker, therefore, has justly emphasized the necessity that the reviewing tribunal should be an administrative court free from the direct control of the political administration. Such an administrative court has been created in Virginia, where administrative appeals may be taken from the corporation commission to the supreme court sitting in an administrative capacity. The existence of a right of administrative appeal, however, does not deprive the judicial tribunals of their jurisdiction, which may be invoked against illegal action on the part of administrative officials.

Attempts have been made by providing for notice and a hearing before administrative bodies to render their orders binding as judicial decrees, but such attempts have proved unsuccessful. In the recent case of Prentis vs. Atlantic Coast Line, 211 U. S., 210, the court holds that the making of a rate by a legislative or administrative body after hearing the interested parties, is not *res judicata* upon the validity of that rate when questioned by those parties in a suit in court. Litigation does not arise until after legislation, nor can a state make such legislation *res judicata* in subsequent litigation. A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under existing laws, while legislation looks to the future and changes conditions making new rules to be thereafter applied.

In certain respects the present tendency of judicial decisions is to strengthen the hands of the administration. In the recent case of Oceanic Steam Nav. Co. vs. Stranahan, 214 U. S. 320, the court holds that it is within the competency of Congress when legislating as to matters exclusively within its control, to impose appropriate obligations, sanction their enforcement by reasonable money penalties, giving the executive officers the power to enforce such penalties without the necessity of invoking the judicial power. The administration, therefore, can be made practically independent of the necessity of resorting to the court to compel obedience to its lawful action, if proper legislation confers upon the administration power to enforce its own orders by administrative methods, as distinguished from methods requiring the exercise of judicial authority, as in the case of Wing Wong vs. U. S., 163 U. S. 228. Again, even where the administration has to resort to the courts to collect a penalty for the violation of its orders, such penalty may be collected in a civil suit, where it is much easier for the government to succeed. Again, if the administrative officer is willing to take the risk of a subsequent trial by

jury on the question of the legality of his act, his right to proceed summarily, in cases of emergency under the police power, is upheld by the recent case of North American Cold Storage Co. vs. Chicago 211 U. S. 306.

Perhaps the most common and most important occasion of conflict between the administration and the courts, and often between the legislature and the courts, arises on the question of the legality of the rates fixed for public service by the administrative or legislative body. It is unconstitutional for the government, either state or national, to compel a public service corporation to devote its property to the public service at a rate so low as to deprive the corporation of reasonable compensation. Whenever, therefore, any attempt is made by legislation or by administrative order to lower rates, the corporation has the right to claim that such law or order is unconstitutional, and to appeal to the courts for protection against the enforcement of such law or order by the administrative authorities. The effect of this, where the court sees fit to grant a temporary injunction, is to postpone the operation of the law or order until a judicial determination that such law or order is constitutional. Such litigation has been fruitful of public criticism upon the courts for interfering with legislative or administrative authority, and especially upon the federal courts for interfering with the state authorities. Most of such criticism is groundless. A suit to enjoin the state officials from enforcing an unlawful act of the legislature or order of a commission, is not a suit against the state, but against officials who are assuming to act without authority of law in the name of the state.[1]

Two recent decisions of the United States supreme court will do much in the future to diminish such criticism. The first case, Prentis *v.* Atlantic Coast Line,[2] holds that where there is an administrative appeal allowed, as in Virginia, from the action of the administrative body making the order claimed to be illegal, to a higher administrative tribunal, the plaintiff, if he comes into equity to enjoin the enforcement of the illegal order, ought to show that he has first exhausted his rights in the administrative tribunals of the state itself. The second case, that of Wilcox *v.* Consolidated Gas Co., 212 U. S. 19, holds that the case must be a clear one before the courts should be asked to interfere by an injunction with the state legislation

[1] Spencer's Appeal, 78 Conn. 301, 306.

[2] Prentis *v.* Atlantic Coast Line, 211 U. S. 210.

regulating rates, in advance of any actual experience of the practical result of such rates. These two decisions will tend to relieve the pressure upon the federal courts for interference with the action of state authorities in the matter of rates.

Whether any legislation will or can ever be adopted relieving the administration entirely from the interference by courts in regard to administrative orders affecting corporations, is doubtful. The right to a judicial determination of the reasonableness of the rates prescribed by the administration cannot under our present constitution be taken away from the corporation. It might perhaps be possible, however, by providing an indemnity fund of sufficient size, and authorizing the court to award to the corporation from such indemnity fund adequate compensation for the injury caused to its legal rights by a reduction in rates, to make such reduction effective immediately, leaving the corporation to obtain its compensation by appropriate litigation. The United States government has a right to have second-class mail matter carried at less than the actual cost of transportation, but it has no right to throw the loss caused by such carriage upon the railroad companies. The railroad companies must be paid the cost of their service, and if the publishers get that service from the government at less than cost, the tax-payers must provide the amount of the difference. The United States government charges less than the cost of carriage for second class mail matter because of the belief of Congress that it is a good thing for the people who pay taxes to encourage distribution of newspapers and periodicals for the public enlightenment. If it occurs to Congress that it is equally desirable that corn, or cotton, or coal should be carried at rates less than the cost of the service rendered, the government in some form may provide for such carriage; but under the constitution the burden of the loss must be thrown upon the tax-payers, and not upon the persons whose capital is invested in the railway companies. Any law, therefore, requiring a public service corporation to furnish any service at less than a reasonable rate, or requiring such corporation to conduct its business in a particular manner without protection from loss, and for securing due compensation, is unconstitutional, and the defect cannot be healed by a judicial degree which attempts to insert adequate provisions for the protection of the corporation from such laws. The law itself must save the party's rights and not leave them to the discretion of the courts as such.[3]

[3] Louisville & Nashville R. R. Co. *vs.* Central Stock Yards Co., 212 U. S. 132.

It is, therefore, necessary that any legislation which is to free the administrative control of corporations from judicial interference shall itself provide for adequate compensation to the corporations for injury resulting from such unrestricted control. Hitherto, the statesmen who have argued against the judicial restriction of such control have not been willing to assume the responsibility of asking their constituents to pay the necessary price for the removal of such restriction. That the demand for the confiscation of private property by legislative act or executive decree has been steadily and successfully resisted by the courts, shows the immense service to the public welfare of an independent judiciary. That criticism should be directed at the judiciary for its protection of the fundamental rights guaranteed by our federal constitution is unfortunate. The corporation may be made to play any tune which the people may wish to dance, but those who dance must pay the piper. Ultimately the good sense of the American people will recognize this fact, and the present transition stage of conflict between corporations, courts, legislatures and administrations, will be succeeded by an era in which common sense and fair dealing, with improved non-political administrative machinery, will render the administrative control of corporations as normal a function of government as any other.

ADMINISTRATIVE COURTS FOR THE UNITED STATES

BY EDMUND M. PARKER
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My purpose in presenting this subject for your consideration is to indicate what, in my opinion, is the proper field for the development of administrative courts in the United States, and to that end I propose, first, to consider certain suggestions which have been made looking toward the introduction of administrative courts in this country, and then to outline briefly the need for such courts which actually exists and the functions which they should be expected to perform.

I trust that the result may be to assist in formulating a more precise definition of administrative courts and of their proper jurisdiction than has heretofore obtained and to remove some of the ambiguity which has attached to the previous presentations of the subject.

The existence of administrative courts in the counties of continental Europe is familiar knowledge to you all, and so also is the fact that through these courts the private citizen is greatly aided in his controversies with the State and its officials, that he finds there a jurisprudence and a procedure more advantageous to him than those of the regular courts, that is, both rights and remedies which the regular courts are unable to afford him.

This is especially noticeable in France where the jurisdiction of the administrative courts is more extensive than elsewhere, and the knowledge of these facts has led either to suggestions of establishing in this country administrative courts framed on the French model, or at least to expressions of regret that in the absence of such courts we were deprived of their beneficial jurisdiction.

Let us first consider, therefore, whether or not it would be desirable to attempt to establish in this country administrative courts similar to those of France, namely, courts which should have jurisdiction over claims of private individuals against the State, both in contract and in tort, and over questions relating to the legality of acts of offi-

cials, and whose members should be administrators rather than judges.

Claims against officials personally, we will assume, are to be left, as in France, to the jurisdiction of the regular courts.

There is, of course, no need of making such an innovation as the establishing of such courts would be, if the action of our regular courts in regard to these matters is already entirely satisfactory, so that the question which underlies the whole discussion as to the advisability of establishing such administrative courts is this: Is the action of our present courts in regard to these matters, namely, claims against the state and control over executive officials, satisfactory?

I have no hesitation in saying that, in my opinion, the action of our regular courts in their protection of the rights of the individual against the state and its officials is not satisfactory, and indeed falls far short of what it should be. In support of this opinion two matters merit especial attention.

In the first place, our courts have established the doctrine that there is no liability on the part of the state, either in contract or in tort, except in so far as the state has given its assent thereto, and that this assent can be given only through the action of its legislative department.[1]

The effect of this doctrine is to place the citizens of this republic at a greater disadvantage in their contests with the government than those of a monarchy in their contests with the crown.[2] This doctrine in its origin was one put forward by absolute monarchs for their own protection, and our courts have perverted it to the advantage of a republican community as against the individuals who compose that community. The divine right of kings, as Spencer says, has become the divine right of the multitude, and it may be added, rests on no better basis in the latter case than in the former. The result is that in this republic the burdens of the public services are not borne equally, as they should be, but fall with greater weight on certain individuals than on others, not in proportion to their ability to support those burdens, but to their misfortune.

This, as I believe, mistaken attitude of our courts, may be emphasized by the action of the supreme court of a Massachusetts case, which, after the legislature had expressly conferred on our courts "jurisdiction of *all* claims against the commonwealth, whether *at law*

[1] Troy and Greenfield R. R. v. Com. 127 Mass. 43, 46 & ca.cit.

[2] Brown v. U. S. 6 Ct. of Cl. 171. 192.

or *in equity*," decided that our courts should not take jurisdiction of such claims arising from the wrongful or negligent acts of state employees in the performance of their duties. The reason given was that

"the object of the statute cannot have been to create a new class of claims for which a sovereignty has never been held responsible and to impose a liability therefor, but to provide a convenient tribunal for the determination of claims of the character which civilized governments have always recognized, although the satisfaction of them has been usually sought by direct appeal to the sovereign, or, in our system of government, through the legislature."[3]

The implication is clear that governments which are civilized have never recognized claims of this description. As suits on such claims are daily brought in the administrative courts of France, it would seem that the supreme court of Massachusetts was of the opinion that the government of France was not civilized. Another explanation is, however, possible, namely, that had our supreme court known more about France, they would have phrased their decision somewhat differently.

The supreme court of the United States has expressed itself to the same effect.

"No government has ever held itself liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents."[4]

The result of this doctrine and the attitude of the government of the United States towards private rights is set forth in the strongest manner by our own Court of Claims.

"In the great arrogance of great ignorance, our popular orators and writers have impressed upon the public mind the belief that in this republic of ours private rights receive unequalled protection from the government; and some have actually pointed to the establishment of this court (of claims) as a sublime spectacle to be seen nowhere else on earth. The action of a former congress, however, in requiring (Act July 27, 1868, 15 Stats. 243) that aliens should not maintain certain suits here unless their own governments accord a corresponding right to citizens of the United States has revealed the fact that the legal redress given to a citizen of the United States against the United States is less than he can have against almost any government in Christendom."

[3] Murdock Grate Company v. Com. 152 Mass. 28. 31.
[4] Gibbons v. U. S. 8 Wall. 269.

"The laws of other nations have been produced and proved in this court, and the mortifying fact is judicially established that the government of the United States holds itself, of nearly all governments, the least amenable to the law."[5]

In the second place our courts are charged with being reluctant to interfere with the action of the government or of its officials, and with exhibiting an unfortunate timidity in dealing with such matters, and this attitude of our courts is forcibly contrasted with that of the administrative courts of France which, it is asserted,[6] and in my opinion, with justice, are far readier to afford to the private individual remedies against official action than are the regular courts, and in support of this assertion many instances are given of cases in which the administrative courts have afforded a remedy against an official act where the regular courts, though also having jurisdiction over it, had been unwilling to interfere.

The charge of being unduly reluctant to interfere with the action of executive officials, is one which, it seems to me, can fairly be brought against the courts in this country. Possibly an exception should be made of the courts of the United States in their relations to state officials, for those courts, certainly in the application of the fourteenth amendment, have found and availed themselves of many opportunities for interfering with state action. But the courts of Massachusetts, with which I am the most familiar, are at present, I believe, extremely averse to interfering with official action, and are inclined to support such action wherever possible, in spite of irregularities which would seem to amount to a disregard of those safeguards, the observance of which had been required by the legislature.

Although this is a matter regarding which it is not easy to adduce exact proof, since many of the cases which would establish it never find their way into the reports, but end with the application to a judge who, in the exercise of his discretion, declines to interfere, nevertheless a marked contrast between the original and the present attitude of our court regarding interference with administrative officials may be shown by brief quotations from two cases, nearly a century apart, and which will illustrate the tendency toward greater laxity on the part of the court.

[5] Brown v. U. S. 6 Court of Claims 171. 192.

[6] Bulletin de la Soc. de Legislation Comparée vol. 2, pp. 299-300. 1909, Rev. Gen. d'Administration II. 83.

In 1818, the court held an entire tax levy void, because it exceeded the amount authorized by law by only three per cent and laid down the principle that,

"strictness in these matters is wholesome discipline—as it will, from motives of interest, produce care and caution in the selection of town officers, and diligence in them when chosen."[7]

Nothing could be more admirable, had the court but had the firmness to adhere to this rule.

In 1908, the court declined to interfere with an assessment for street watering which exceeded by over 6 per cent the amount authorized, remarking,

"We are of opinion that the slight inaccuracy in the estimate and in the amount of the assessment, in reference to the amount which was afterward expended, does not affect the validity of the assessment."[8]

This reluctance of our courts to interfere with the executive officials of the government is emphasized when we consider their tendency to treat as conclusive the decisions of executive officers as to the scope and application of the laws which they are to carry out.

The rule, as stated by the supreme court of the United States, is as follows:

"That when the decision of questions of fact is committed by congress to the judgment and discretion of the head of a department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness and the courts will not ordinarily review it, though they may have the power and will occasionally exercise the right of so doing."[9]

This rule would seem to place such decisions entirely beyond the reach of the courts except in the comparatively rare cases where it could be said that the decision was not simply erroneous, but had no legal basis whatever on which to rest.[10]

So far, therefore, as the demand for administrative courts rests on dissatisfaction with the action of our regular courts, I should incline to the opinion that its case was made out, and this view is confirmed by an English jurist of high authority, W. Harrison Moore.

[7] Libby v. Burnham, 15 Mass. 144.
[8] Corcoran v. Cambridge, 199 Mass. 5. 14.
[9] Bates & Guild Co. v. Payne, 194 U. S. 106. 109.
[10] Am. School of Mag. Healing v. McAnnulty, 187 U. S. 94.

After referring to

"that judicious mixture of law and discretion by which an Administrative Court can in certain cases reconcile justice to individuals with the public necessity" he adds, "Our system of submitting questions between Government and citizens to the ordinary Courts is not in all things advantageous to the citizen. If it gives him remarkable protection against the exercise of governmental power, still, in a system which gives no redress against the State for tort, and, by narrowing the application of the ordinary principles of representation, barely recognizes its liability for contracts made on its behalf, there is something to seek in that which concerns the State as a juristic person."[11]

Professor Moore is speaking of the English system, but his remarks apply, of course, with even greater force to our own.

But even if the present state of affairs be unsatisfactory, it does not necessarily follow that the remedy is the establishment of administrative courts having the jurisdiction above stated, and a brief examination of what would be involved in the establishment of such courts will, I think, show that the correction of the existing evils must not be sought solely in that direction.

If such administrative courts were established to deal with claims against the State, one of two things must happen, either they would be under the control of our present courts of appeal, in which event the administrative courts would be compelled to accept the objectionable legal doctrines already promulgated by those courts, so that nothing would have been gained by the change, or they would be independent of them, and create a new jurisprudence of their own.

But under our system, the change of established legal doctrines should be made through legislation, and if it is desired to modify or reverse the present doctrines of our courts in regard to the liability of the State and of public agencies, legislation would be required to enable the administrative courts to create for these matters a jurisprudence of their own more just to the citizen than that of our present courts. That legislation, however, instead of being limited to the abolition of the old doctrines (leaving the administrative courts to supply the new) might more simply replace the old rules by new and more equitable ones established by legislation, in short by an administrative code, to be observed and enforced by the regular courts.

Although there is at present no marked demand for an entire administrative code, piecemeal legislation of that character is constantly being enacted and more will doubtless follow as soon as the study

[11] *Acts of State in English Law*, 31.

of administrative law as a separate branch of jurisprudence receives more recognition in our law schools.

At present, its doctrines although of no small importance to the actual practioner, are, too often, either ignored, or, when taught, are considered as sub-divisions of such subjects as agency and corporations, instead of forming, as they do, a separate and independent body of public law, and a change in this respect, namely, in the direction of laying greater stress on the teaching of the doctrines of public law, and in connection therewith on the study of comparative jurisprudence, is, I feel, something greatly to be desired, and a matter which should be strongly urged.

So far, therefore, as the jurisprudence of the French administrative courts embodies doctrines as to the liabilities of the state and its agencies to the individual more equitable than those of our own courts, the adoption of similar doctrines here must be brought about through legislation, and through a wider (shall we say, a less provincial), training for our bar and bench, and probably such modification in that training should be sought first, as only through it can come that change in legal sentiment, which necessarily must precede the needed change in legislation.

These suggestions may seem superfluous in the precincts of this university (Columbia) which has been the leader in the movement toward that broader training. I believe, however, that they are not without application elsewhere.

It would therefore seem that there was no necessity for the establishing of administrative courts in this country for the purpose of introducing through their instrumentality those equitable doctrine regarding the liability of the State to the individual which have given distinction to the jurisprudence of the French administrative courts.

We can secure the adoption of those doctrines only through legislation, and if that legislation can be had we may leave to the regular courts its application to the cases which arise.

The adoption of those equitable doctrines regarding liability would, however, meet but part of the objections to the jurisprudence of our present courts to which attention has been directed. There would still remain that of the unwillingness or inability of our courts to exercise the needful control over the acts and decisions of administrative officers.

This difficulty, it seems to me, can be met only through the establishment of administrative courts and that there exists a very pressing

need for the creation of such courts for that purpose I entertain no doubt, and this step appears to me to be one entirely suited to our customs and which does not necessarily involve taking from our regular courts any jurisdiction now belonging to them.

To make the matter somewhat clearer, let us examine for a moment the tendency, already manifest, toward the development of judicial forms and procedure in the administration itself.

Administration is defined as the carrying out of the law. To do this, the official must form a conception of what the law means and whether or not it applies to the matter before him. This conclusion may be the unaided judgment of the executive official alone, or it may be formed by him after notice, hearing, and taking of testimony. This applies equally to cases of single officials, or of boards.

In cases where the single official or the board proceeds according to judicial forms, namely, reaching a decision only after notice to the parties interested, and affording them hearing, with the opportunity to present pertinent testimony. we have all the appearances of a court, and executive boards and officials acting in this way are often termed administrative courts, but as I shall have occasion to point out later, I feel that the term should be restricted to boards *outside* of the direct line of the official hierarchy.

The adoption of such judicial procedure by our national administration is, however, at present proceeding in a haphazard and inconsequential manner, doubtless as the result of two distinct and somewhat conflicting tendencies in our administrative development to which I wish to direct attention.

The first of these tendencies is that toward freeing the administration from all control by the regular courts.

This tendency is noticeable in the decisions of the courts, to which reference has already been made, which hold the decisions of the administrative officials on the interpretation and application of the law as practically conclusive.

In legislation, a prominent instance of this tendency is, of course, the effort to place the rate making power of the interstate commerce commission beyond the reach of the courts, and the same effort has been made in regard to the decisions of many of the state railway or corporation commissions.

Perhaps an even more striking instance, and one which has received the endorsement of the supreme court, is found in our immigration acts, authorizing the exclusion of certain *aliens*.

It has been held that congress by these acts has conferred on administrative officials the exclusive power to determine whether one seeking to re-enter the United States is or is not a citizen of this country,[12] thus depriving American citizens of all rights of trial before a regular court on the question of their citizenship,

"and lifting an immigration official above all regular courts, by allowing him to determine finally the existence of his own jurisdiction,[13] a decision which the dissentient judge[14] characterized as "appalling" and which has been aptly described as "a grave menace to the liberty of native born white American citizens."[15]

At the same time, we are told that such decisions are not the exercise of a judicial function by the administrative officials, since it has also been held that the decision of the officials although conclusive when adverse to the immigrant, is not conclusive when in his favor, and in this latter event may subsequently be reversed by the very officials who rendered it and the immigrant arrested and deported, the reason given being that

"the board is an instrument of the executive power, not a court," and that its decisions are "decisions of the executive department and cannot constitute *res judicata* in a technical sense."[16]

I regard with grave apprehension the possible consequences of the logical extension of the doctrine of the Ju Toy case. I do not deny that there are cases in which it is necessary that the decision of an executive officer made summarily should for certain purposes be deemed conclusive and not subject to review in the ordinary courts, but as a rule such cases are either political cases or cases of emergency as, for instance, the decisions of the proper executive officers that a state of insurrection or riot exists, or of health officials as to the existence of nuisances or epidemic diseases.

The decision in the Ju Toy case, however, cannot be supported on any such ground.

The issue to be determined, that of the citizenship of the applicant, was not political, nor was there any element of emergency in the matter and that issue is one so peculiarly appropriate for decision

[12] U. S. v. Ju Toy, 198 U. S. 253.
[13] McGehee. *Due Process of Law*, 194.
[14] U. S. v Ju Toy, 198 U. S. 253, 269.
[15] *No. Amer. Review*, Sept. 1905, p. 378.
[16] Pearson v. Williams, 202 U. S. 281, 284, 285.

by the regular courts that in France the administrative courts are not even allowed to pass upon it, but are required to refer all such matters for decision to the regular courts.

If decisions of executive officers, not reviewable by the courts, constitute due process of law for the deportation of American citizens, it would seem that but little substance was left to the constitutional guarantee against depriving persons of life, liberty or property without due process of law.

It is difficult to regard such a decision as that in the Ju Toy case or the legislation on which it is founded in any other light than as furthering the cause of arbitrary government, and this tendency is emphasized when we come to consider the later legislation[17] which prohibits the secretary of commerce when passing upon one of these immigration appeals from considering any evidence except that which was taken before the board of special inquiry which hears the case in the first instance, thus nullifying as far as possible whatever benefit the petitioner might derive from such appeal.

The second tendency is that toward requiring the administration to adopt judicial forms and procedure in making decisions which affect the personal or property rights of private individuals.

The two tendencies coöperate in somewhat this fashion. If a matter is to be withdrawn from the cognisance of the regular courts and left to the administration alone for decision, it is recognised that the administration should be required, when dealing with that matter, to adopt the procedure which in the courts has been found essential to considerate and deliberate judgment, but on the other hand, if the administration *is* to be required to adopt judicial procedure, the tendency is to make that procedure as rudimentary as possible, lest in freeing the administration from the control of one court, it fall under that of another.

This matter may be made clearer by specific examples.

Judicial procedure may be said to comprise the various elements of notice to the person to be affected by the proposed action, opportunity to be heard in person or by counsel, public trial, and appeal, and also, generally speaking, either in first instance or on appeal, the concurrence of two or more in the decision.

Of these, the most rudimentary is the simple appeal, and when this is taken simply from an inferior official to his superior it is called the hierarchic appeal, and slight though the protection be which it

[17] Act of 20 Feb., 1907 c. 1134. §25.

affords, it yet doubtless operates to some extent as a check on hasty or prejudiced action on the part of the inferior.

But a far more effective check against such action is given if the appeal lies to a board outside of the line of the official hierarchy, instead of the official superior of the one whose act is questioned, that is, to one whose principal duty is the carrying out of the very law whose enforcement in the particular case is questioned.

The term, administrative court, should not, in my opinion, be applied to hierarchic superiors when hearing administrative appeals, even though in such hearings, they adopt the forms of judicial procedure. The term should be restricted to boards outside of the direct line of the official hierarchy, composed indeed of administrators, but whose functions as members of such boards are those of deliberation and judgment, rather than execution. It is evident that the more such courts in their action adopt the essentials of judicial procedure, as above described, the more will the court character predominate, and the greater will be the protection afforded to the citizen against arbitrary administration.

Now in the development of our administrative organization, the tendency toward the adoption of judicial procedure by the administration is limited by the other tendency, namely, that toward freeing the administration from all court control and the result is the development of hierarchic control alone while the establishing of administrative courts properly so called is avoided.

This may in part be due to some confusion of thought and to the belief that the hierarchic appeal, if ensuring a hearing, is really an appeal to an administrative tribunal, for I find the term administrative tribunal applied in a very able article[18] to such different bodies as the boards of general appraisers, the comptroller of the treasury, the court of claims, the commissioner of internal revenue and the secretary of the interior, but on the whole I am inclined to think that the unwillingness to create proper administrative courts is intentional, and it marks a tendency which certainly should be resisted especially in view of the attitude of our regular courts toward the administration and its officials.

Instances of this tendency toward the hierarchic appeal alone are found in our land office appeals, first to the commissioner, then to the secretary, in the pension legislation and in the immigration acts

[18] American Administrative Tribunals. H. M. Bowman. *Pol. Sci. Quar.* Dec., 1906, p. 613.

already referred to, where the appeal from the boards of special inquiry (which have somewhat the semblance of an administrative court) lies first to the commissioner of immigration and then to the secretary of commerce. Even where there is established what at first sight would seem to be a real administrative court, namely, in the boards of general appraisers, this same tendency is apparent, in that those boards, when deciding appeals relating to the valuation of property (and on which questions their decisions are final), are allowed to disregard the requirements of judicial procedure and thus deprive the citizen of the protection which those requirements would have afforded. This appears from the provisions permitting them to make their hearings secret, to exclude both the importer and his attorney, and to limit the examinations of witnesses as they see fit; and it further appears in the express provision giving to those boards in such investigations *inquisitorial* powers, which term suggests the use of secret torture of some desription, probably the famous "third degree."[19]

This distinction between the simple hierarchic appeal, even when accompanied with the requirements of notice and hearing and the appeal to an administrative court, properly so called, is, of course, no novel conception. It is fundamental in the administrative organization in France, but, although attention has been directed to it in this country,[20] sufficient stress has not been laid here on its importance.

Let us recognize that the hierarchic appeal is but a palliative, that while it may and often does afford some protection against arbitrary administration, this protection is not comparable to that afforded by an appeal to a properly constituted administrative court, and that it is only through the institution of these latter that we can attain that safeguard against the absolutism of the administration, which both our legislators and our present courts seem inclined to deny to us.

Through the readiness of congress to increase the powers of the national executive and the reluctance of our courts to exert any effective measure of control over officials, we are moving rapidly toward arbitrary government, but I am confident that, if the matter be properly put before our legislators, they will not persist in denying that protection against the absolutism of the administration which

[19] Act of 10 June, 1890, §13, as amended by §28 of Payne Tariff Act, 5 Aug., 1909.
[20] Fairlie, *National Administration of the United States*, 95.

even Napoleonic imperialism accorded, viz: the opportunity for the review of official decisions by a proper administrative court.

Let one thing however be constantly borne in mind in the creation of these administrative courts. See to it that the positions on such courts command the services of men, who by their knowledge, ability and integrity are fitted for the exercise of the judicial function in the revision of the acts of the officials on which they are to pass. Unless care be taken in this matter, the institution of such courts, so far from having the beneficial effect which may well be anticipated from them, will but tend to bring the conception of judicial control over administrative officials into disrepute and to strengthen the trend toward arbitrary government.

DISCUSSION

BY PROFESSOR ERNST FREUND
University of Chicago

The thought of those interested in public administration seems at the present time to be mainly concerned with problems of efficiency. This is easy to understand. With the rapid expansion of governmental control over all kinds of important interests we have, on the whole, held fast to the self-governmental theory of administrative organization which is not productive of the highest degree of expert knowledge and skill. Moreover legislation in its experimental stages frequently fell short of granting adequate power or erred in the direction of excessive rigor; in either case with the effect that in the past attempts to carry out such legislative policies have more than once met with defeat in the courts.

It is, therefore, not unnatural that recent efforts should have been chiefly in the direction of strengthening administration action. The history of railroad legislation is conspicuous in this respect. A study of the debates in congress in connection with the rate act of 1906 leaves the impression that the main concern of the legislators was how to get rid of the right of court review, and its final indirect recognition appears as a grudging concession to constitutional necessities. Yet increased administrative powers call for increased safeguards against their abuses, and as long as there is the possibility of official error, partiality or excess of zeal, the protection of private

right is as important an object as the effectuation of some governmental policy.

It is well to bear in mind that this protection is the main concern of administrative law while the problem of efficiency viewed simply with reference to the social or economic end to be attained should rather be treated as the subject of administrative science. It would greatly aid the building up of a new and still somewhat unfamiliar branch of legal discipline like administrative law if its distinctive subject matter were clearly recognized and marked off.

An impatience with judicial interference, similar to that which has been experienced in this country, but due to somewhat different causes, led the statesmen of revolutionary France to apply the theory of the separation of powers in such a manner as to debar in principle (although the principle was not consistently carried out) courts from meddling with public administration. A substitute was furnished by the creation of a system of administrative jurisdictions which has found its way from France to other parts of continental Europe. Neither in England nor in this country was a similar constitutional issue ever raised, and what judicial relief there was against administrative action was given by the regular courts. A system of administrative courts, though lacking some guaranties of independence, is yet based upon a distinct recognition of the necessity of subjecting official action to a control of a judicial nature, and since it is the sole business of these courts to administer such control, there is every inducement for the development of this branch of the law. To the regular courts this control is a special and anomalous jurisdiction. There is no distinct theory of public law, the very name of which is unknown to common law terminology. Common law rights are made to yield to the prerogatives of the sovereign, and the whole system of relief is permeated by an ill defined discretion resting upon considerations of public policy. Our law is, therefore, far from affording an adequate or consistent system of remedies for the protection of private rights against the exercise of public powers.

There are three points especially in which that protection is imperfectly worked out and capable of improvement.

1. In the first place, there ought to be some definite principle as to the right to a review of administrative decisions. If we differentiate questions of expediency or discretion, questions of fact and questions of law, the law is tolerably clear as to the first and the third. A fair exercise of discretion must be removed from judicial control

unless the administration is to be thrown into the hands of the courts, and relief must be confined to cases of abuse. This is in accordance with the attitude of our courts corresponding, in that respect, to that of the courts of England, France, and Germany. Questions of law ought always to be judicially reviewable and on the whole, the courts have worked out the system of remedies in such a way as to recognize this right, although subject to certain quite anomalous and unjustifiable qualifications. Mainly, then, the uncertainty of our law relates to the right to review questions of fact. According to the later rulings of the federal supreme court, which seem also to apply to questions of law expressly committed by statute to administrative authorities, the courts will give relief if the administrative decision is obviously mistaken or constitutes an abuse of power, but not necessarily in other cases. The administrative finding is, therefore, treated much like the verdict of a jury. This seems not sufficient, for it does not secure to the private interest an independent judgment on the part of an impartial authority. All experience in governmental organization goes to show that there is no guarantee of impartiality where the primary purpose of the officer is to carry out some policy or accomplish some public end, and not to decide simply between conflicting claims. It is not so much a question of lack of independence as of incompatibility of functions. It is therefore, of less importance that the review should be entrusted to a regular court than that it should be entrusted to some authority, the primary or sole function of which it is to adjudicate claims. Germany seems to recognize judicial or quasi-judicial review of questions of fact as the general principle of administrative law. The recent recommendation of a separation of the judicial and the administrative functions of the interstate commerce commission is based upon the same principle. The principle ought to be given effect with regard to all administrative decisions, not necessarily by applying all technicalities of a judicial trial, but granting to the individual at least the essential elements of an impartial hearing.

2. In the second place, the system of specific administrative remedies should be simplified. Even where the differences between forms of action have otherwise been abrogated by the code system, the distinction between different extraordinary legal remedies remains as a needless feature of legal archaism. The province of each writ (mandamus, certiorari, quo warranto, etc.) is not only determined by considerations which are at present without real significance,

but the distinctions between the various writs are at some points meaningless and unintelligible, and now and then are responsible for a practical denial of justice. And above all there should be a revision of the whole question of equitable jurisdiction in the matter of administrative relief. The old doctrine that a court of equity will not meddle with matters of public power has broken down; in the federal courts there is in many cases no other form of relief available; the former doctrine now survives mainly to create confusion, uncertainty, and technical distinctions. There seems to be no good reason for not allowing an injunction where mandamus would be available. It would be still better if there were one simple form of stating a case for judicial determination wherever a right to judicial relief is justified on principle.

3. The third feature of the law, which is in an unsatisfactory condition, relates to the matter of compensatory relief. The traditional common law method, traceable to the thirteenth century, of testing the legality of administrative action, is by an action in tort against an officer. Subsequently this was supplemented by quasi-contractual actions. In this way disputed questions regarding assessments, seizures, etc., were determined, and the system was adopted for settlement of customs disputes in the United States and of administrative controversies of various kinds in the several states. No suit in tort was allowed against the crown, and this immunity of the sovereign was received as part of the common law in America and applied both to the commonwealths and to the general government.

Actions against municipalities are more freely entertained in this country than in England. But the liability in tort is regularly denied in cases in which the injury suffered is incidental to the performance of some delegated governmental function. In New York the distinction between proprietary and governmental functions is carried almost to the point of absurdity so that, for instance, a city is liable if a child is run over by a street cleaning cart, but not if run over by an ambulance. Where there is an error in the exercise of the city's police powers to the injury of an individual, he has no remedy against the city. It thus appears that where the illegal exercise of public power directly invades private rights, the only available remedy, as a rule, is an action against an officer. This is unsatisfactory, because it is unjust to the official who may have acted to the best of his ability in cases, perhaps of real doubt, and because it is unfair to the injured individual who, if successful, may find that he has a

judgment against a financially irresponsible officer. Moved by the injustice to the officer, who acted in good faith, courts have in a number of cases sought to deny the personal liability of the officer when he acted in a quasi-judicial capacity, with the result, of course, of taking even the theoretical remedy which was intended to protect the individual right.

The only satisfactory compensatory relief would be against the community: the city, the state, or the general government. Their non-liability is so commonly assumed as axiomatic that reasons for it are hardly discussed. Were the matter carefully examined it would perhaps appear that neither the danger of fraud nor the financial burden imposed would be as great as in the case of the liability of a city for defective sidewalks, which the courts have so generally recognized. The city of New York under its charter is held for the errors committed in its sanitary administration, an eminently just provision which has not proved to be unduly burdensome financially. In the federal administration, the action against the collector of customs was virtually made an action against the government by legal provision which made judgments recovered against the collector payable out of the public treasury, and now there is a statutory method of recovering excess duties paid, in which the officer is not even normally the party defendant.

On the whole, the principles of liability are much the same on the continent of Europe as they are in England and America, except that the state in its private or proprietary capacity is suable as fiscus. In Prussia the liability of the fiscus is recognized in some cases where valuable property rights are wrongfully destroyed or impaired by public action. And quite recently a law has been enacted in Prussia which establishes the liability of the state or municipality for every official default. This shows that the idea of a right to indemnity against a community is not altogether visionary or impracticable.

BY PROFESSOR F. J. GOODNOW
Columbia University

Professor Freund has alluded to the intricacies and technicalities of the New York law as to the extraordinary legal remedies which are the main means available in New York for exercising a control over the acts of administrative officers. I remember one case here in which a school teacher, I think it was, brought suit against the city

of New York to enforce some right. He went up to the court of appeals, our highest court, to find out that he ought to have sued the board of education instead of the city. He started another action against the board of education and followed that up to the court of appeals also, and learned that he ought to have asked for a *mandamus*. When he tried for a *mandamus* he was told he had been guilty of laches, or negligence, in not applying for it in the first instance and that the time within which he might by law ask for a *mandamus* had passed and that he thus had no remedy at all.

This episode is only another illustration of the extremely technical character of the system in existence in a number of our states by which individual rights may be protected and I may add that the courts do not look with favor upon the attempts of the legislature to make the remedies available more effective. Thus again in New York the legislature attempted by statute to enlarge the province of the writ of *certiorari* as the means for the judicial review of assessments for the purpose of taxation. A Law of 1880 provided that a court by *certiorari* could quash an assessment because it was illegal, excessive, or disproportionate in that a particular piece of property was assessed at a higher rate than other property on the same assessment roll. But our court of appeals has held that an assessment may not be quashed for disproportionality merely because the property is assessed at a higher rate than some other particular piece or pieces of property but only because it is assessed at a higher rate than the rate of assessment generally adopted by the assessors. As the ascertainment of that rate in the larger cities would involve practically an examination of the entire roll, which would be very expensive, the writ of *certiorari* as a remedy for the review of tax assessments is available only to the largest taxpayers, generally corporations.

But the technical character of these remedies is not the worst feature of the situation. It may be a hardship to be obliged to employ the most expensive legal talent in order to be sure that one is applying for the proper remedy. But it is a greater hardship to be practically deprived of all effective judicial remedies. And this is the situation in which the individual is placed in dealing with the government of the United States. As the federal courts are courts of enumerated jurisdiction, congress may by omitting to give them power or by positively excepting certain classes of cases from their jurisdiction, make it almost impossible for the individual to contest the legality or constitutionality of the action of federal administrative officers. This

has been apparently the policy to congress. When taken together with the tendency, exhibited by the supreme court in the cases referred to by Mr. Parker, to recognize in the hands of executive departments powers of final and conclusive determination it has produced the condition that the individual is all but remediless in dealing with the United States. For example almost the only way in which it is possible to test the constitutionality of a tax imposed by congress is to pay the tax under protest and sue to get it back. But how can one pay a stamp tax under protest? In a recent case in the Supreme court an individual wished to test the constitutionality of a stamp tax on deeds and mortgages. He bought the stamps, went to the collector and protested against affixing them to the instrument. The collector told him not to affix the stamps if he did not wish to, but as he was liable to a criminal penalty for not putting them on if the law were constitutional he preferred to put them on. The supreme court held his affixing of the stamps was a voluntary payment and that therefore he could not recover their value.

All these cases show that our system of protecting individual rights against administrative action is very ineffective and we can do no better than endeavor to beat it into the heads of the legal profession that notwithstanding our boasted protection of private rights in this country, those rights are as a matter of fact much less protected against administrative action than they are under the system of administrative courts in vogue upon the continent of Europe.

BALLOT REFORM: NEED OF SIMPLIFICATION

BY RICHARD S. CHILDS

The general subject of this conference is ballot reform. A more accurate title would be Reform of the Methods of Popular Control of Government, and my topic becomes The Need of Simplification of the Method of Popular Control.

The theory of an election, I take it, is somewhat as follows: It is known that on a certain day the people are to select an officer to perform on their behalf certain duties and to hold certain powers. The office is made desirable by reason of the salary and honor and power attached to it. Various aspirants for the place come before the public by one method or another, make known their qualifications for the office, explain the policies which they desire to put into effect through the power attached to that office, and the voters go to the polls on election day and indicate on the ballot which of the aspirants they prefer.

This process constitutes an election as fondly imagined by those who first framed our various constitutions and charters. This idea of an election is perfectly sound and perfectly practical. It has, however, certain distinct limitations based on familiar facts of human nature, and in the United States these limitations have been stupidly overstepped.

The theory of an election, as outlined, presupposes that the voter is to have an opportunity to get some kind of acquaintance with the claims of the various aspirants for the office. If he fails to do this, it is inevitable that his vote will be unintelligent and easily controlled by those who have an interest in the election.

If the voter in a large community is to know the candidates, it is necessary that the latter secure a proper amount of publicity so that each candidate shall become in the mind of the voter a definite mental picture—a picture so definite that the voter will develop a preference based on adequate information. It must be evident that there is a limit to the number of elections which can be held simultaneously without blurring these mental pictures. Any man must

admit, for instance, that it would not be practical to hold 100 real elections on one day. No voter could remember several hundred candidates even if he tried to do so in systematic fashion, and a system which put the names of several hundred candidates for a hundred offices upon the ballot (without the aid of some guide or trademark label) would result in confusion, out of which would emerge as victors, not the candidates who were most successful in getting votes, but those who were least *un*successful. It would be like letting school children vote, and the result would have no significance as an expression of opinion.

The same condition will be true of a ballot which has much less than 100 places to be filled. It will be true, in part at least, at any election where a non-partisan ballot would be impracticable. If you apply this test of leaving off the party labels, you will see by analyzing the resulting bewilderment, to just what extent the people are ruling, and to what extent they are being led by a ring in their nose.

Take the ballot you voted at the last election! Cut it up with a pair of shears and paste it together with the party labels eliminated, so that for the office of county clerk, for instance you will be compelled to choose between Smith and Jones and Robinson. If on looking over this ballot you find that you are lost without the party label to guide you, that your vote for certain offices was without knowledge or intelligence, to that extent you will know *you* have not been exercising control, but have, by a kind of proxy-giving, delegated your share of the control of those offices to someone else. Extend the same examination to the entire electorate and you will see to what extent that ballot has been used as intended, and to what extent it has proven a failure as an instrument of popular control of government.

A voter who votes blindly is being bossed. Very few voters, even the illiterate, vote a ballot *entirely* blindly. Even the Italian street digger probably has certain reasons for supporting A or B for governor; but every American citizen, with the exception of the professional politicians, votes blindly on certain parts of his ballot, and is to that extent being bossed.

The wide acceptance of bossism is commonly denounced as "apathy" or "indifference," and people say "the citizens are asleep and only the politicians are awake." It is an ancient libel. American citizens are as a whole no more naturally apathetic than the citizens of any other democratic nation. If the burghers of Glasgow were

brought in a body to Philadelphia, and compelled to hold a few elections under the present Philadelphia, system, they would get the same kind of government that the Philadelphians are now getting for themselves. And likewise, if the people of Philadelphia were transferred to Glasgow, the government of that city would continue to be one of the best in the world year after year and election after election. Human nature is the same in Philadelphia and Glasgow. The essential difference is only in the size and character of the burden of participation thrown upon the electorate. If you argue differently you must be prepared to prove that the flood changed the human nature of the people of Galveston. The city of Houston advertises that its city hall is run like a business office. Once it was run like a political hang-out. Did the adoption of the commsision plan of government suddenly change the character of the people of Houston?

Apathy, indifference, are *relative*, depending entirely upon how much is demanded. Suppose, for instance, there were but one polling place for an entire city, so that the citizens must travel considerable distances on election day in order to cast their votes. Immediately we should confront the phenomenon of a decreased vote—more "apathy" as compared with the present condition, where there is a polling place at every barber shop.

Suppose we put the polling place ten miles out of town on the top of a mountain so that every citizen had to go out and scramble all day to get there—we should have a still smaller vote. Most of the citizens would stay in town and attend to their own business, and the reformers would say in disgust "the citizens are supremely apathetic and indifferent and won't do their duty." Yet the people of the town are the same people all the time—no more really apathetic than when the full vote turned out on election day under the other conditions.

That is what I mean by saying that apathy is relative, depending entirely upon how much is required.

We have made our politics even more inaccessible to the people than I have described when I put the polling place on the mountain top. If you and I could, by walking 10 miles and climbing a mountain once a year become effective participants in politics, it is not at all unlikely that we would make the effort. But we have a system of politics so elaborate by reason of the multiplicity of elective offices, that politics has come to be considered a separate profession. That is the very climax of inaccessibility; it removes politics to a distance equivalent to a year's journey.

Every citizen knows that, reformers to the contrary, little is gained in the effectiveness of the citizen by attendance at caucuses and primaries. A citizen must become so familiar with political workings, so strenuous in his opinions and in his political activity, that he becomes a member of the little conclave that meets previous to the caucuses, to set the tables for the electorate, before he begins to exercise any real control over the business of nomination and election. He can do that only at the serious sacrifice of other business. In consequence, the men who become and remain effective politicians are either men who find in politics satisfactory remuneration, or else the leisure class including millionaires and tramps.

The hope of America does not lie with any such class as this, but rather with the men whose time is too valuable to permit them to go into politics. When we make politics a profession, we automatically exclude 95 per cent of the voters,—the great unbribable mass of the community. To restore control to 100 per cent of the people, to secure democracy in place of government-by-politicians, we must so simplify politics that it will no longer constitute a separate profession; we must simplify it until a busy man can, in his scanty spare time, become sufficiently versed in its mysteries to become effective. We must make politics accessible to the great bulk of our citizens.

To simplify politics means that we must strive to approach our ideal of an election, where the candidates come forward, get a full hearing and each voter selects his favorite and has a reason.

One test of practicability is the need for a "ticket" or a "label" to guide the voter; and when we call for the selection of 10, 20 or 30 officials on one day, we find that the people begin to vote by tickets, by party labels instead of by men, giving themselves over blindly to the guidance of politicians.

But it is certainly possible to elect one man on one day in ideal fashion. Experience has demonstrated that beyond a doubt. The experience of certain western cities that are governed by commissions of five elected on a non-partisan ballot shows that the average citizen can manage to select five separate favorite candidates without the aid of a ticket. Whether the exact limit is five or six or seven, is of course a matter that cannot be exactly demonstrated. But tickets have been used at times in some of those cities, showing that five is at least near the border line.

Accessibility thus attained is not enough, however; the people will not inevitably participate even if thay can. Having led our

horse to water we must get him to drink. For instance, suppose we elected a county clerk and no one else at a given election. There is an ideally short ballot—just a single place to be filled—a perfectly "accessible" bit of politics. Yet the ballot on that occasion would fail to gather the judgment of the people just as surely as if the county clerk were lost in a crowd of other minor officials at the bottom of a long ballot. The people with a few exceptions would not go to the polls or pay any attention to the matter, for the share of each voter in the matter of the county clerkship is too insignificant to deserve attention. The electorate shrugs its big shoulders and flatly declines to be bothered.

So we face the problem of devising a system in which the people not only *can* participate but *will* participate. The importance of the election must reach the consciousness of every voter. The way to bring this about is not by exhortation and prayer, but by giving real importance to the position that is to be filled so as to make it naturally conspicuous. For instance—the office of state assemblyman in New York is among the neglected positions. In actual practice this is now an appointive position—appointive by some self-established and irresponsible coterie of local politicians. Even in the off-years when the assemblyman is sometimes the only place on the ballot, experience shows that the people do not take control. The place cannot of course be made appointive by any other elective officer. The proper alternative is to increase the importance of the office. At present the assemblyman is a mere one-one-hundred-and-fiftieth of one-half of a legislature, whose actions are closely circumscribed by the constitution and subject to the veto of the governor. Suppose that, following the experience of the cities, we substitute one chamber for the present bi-cameral system, and triple the size of the districts. Each assemblyman would then be six times as important and, with his increased capacity for good or ill, would attract more criticism, more popular examination. If the people still fail to get excited over that office, cut the size of the assembly in half again, thrusting upon twenty-five men the responsibility of all legislation for a great state. And surely then, if not before, the office will reach a pinnacle of light where the whole electorate will see it and feel concerned about it, and where it will be beyond the grasp of the politicians.

And so we have two practical limitations to our ideal of an election.

1. The number of officials to be elected at any one time must be limited to five or less; and

2. The elective offices must be limited to those that are of such importance and character that the people will consent to exert themselves to make the selection themselves.

In building a democracy everything else must be warped to fit these fundamental limitations. For these are the limitations of the people themselves. We cannot wait for human nature to change, we must order our institutions to fit human nature. There is no hope in putting a square collar on our horse and then condemning the horse for failure to grow a square neck. Accordingly, while it may seem desirable to have a state treasurer elected so as to secure independent audit of accounts, we must secure protection in some different way if it is found in practice that the people do not select the state treasurer for themselves.

It may seem desirable in a city, for various reasons, to have a large council elected at large; but that plan with all its advantages must be rejected on account of the supreme and unalterable disadvantage that in practice the real selecting under those conditions is not done by the voters.

No matter how many reasons may be advocated for having all county officials independently elected, those reasons cannot stand against the overwhelming and unalterable disadvantage that those offices make so little appeal to the popular imagination that the public in practice ignores them, and leaves the selection of those officials to be settled, without supervision, by anybody who volunteers. Deplore such wanton carelessness if you will, but the public is too big to be spanked.

The fact that Great Britain, most of Canada and other foreign democracies recognize the inert clumsiness of the electorate and call for only the simplest popular participation is a big enough difference to account for their relative success. It is the acceptance of the same principle that explains the success of the new notion of governing American cities by small boards or "commissions." And until our politics is simplified in deference to the human limitations of the electorate in our States, counties and cities, the American people can never really control their government.

Many a reformer will disagree with this, and cite the effective rush to arms that has been made by the people under present conditions on this or that happy occasion as showing the people can control now if they want to, but there is always the relapse as the reformer himself will confess. On such occasions, an abnormal condition of

public activity has been created, usually through the means of great and costly stimulation. Being abnormal it cannot persist indefinitely and, either through the ceasing of the stimulus or the failure of the old stimulus to stimulate any longer, we have the inevitable reversion to normal conditions.

The need of simplification in our methods of popular control of government is based on nothing less than the necessity for getting something that in actual operation will prove practical.

When we have by sufficient study and experiment along these lines arrived at a point where the electorate votes only for men it knows, we shall have real popular control, real democracy, and government that more accurately responds to public opinion

PROPOSED METHODS OF BALLOT SIMPLIFICATION

By Arthur Ludington
New York City

You have been hearing about the need for a simplification of the ballot by a reduction in the number of elective offices, and the general argument for "the short ballot" is fresh in your minds. The part which has been assigned to me, as I take it, is to suggest an answer to the first question which the practical man invariably asks: "How are you going to put this principle into operation? Just which offices will you take off the ballot and which will you leave on."

Now I need hardly spend much time explaining that to attempt to answer this question satisfactorily I shall have to go rather far afield and discuss some things which at first sight have little to do with ballot reform. The actual shortening of the ballot in any state will require more or less extensive statutory and constitutional changes. For this sort of work the mere principle that elective offices should be as few and as important as possible is not a sufficient guide. One must have some further criterion by which to determine exactly which offices shall be elective, and which shall be filled in other ways. From the practical point of view, again, if it be decided that a particular officer is no longer to be chosen by the people—or by those who, in our current political comedy, play the part of the people—some other method of selection must be proposed which promises at least as good results. In short, one must come pretty close to outlining a complete new governmental structure for the state, and a structure which will commend itself for other reasons than its mere relation to the ballot. Within the limits of this paper I shall not attempt so ambitious a program, but shall merely suggest as a basis for discussion certain general rules as to what officers should be elected, and then, applying these rules in a few specific instances, try to determine how far they must be modified to fit existing conditions.

One rule, which expressed in general terms, seems to be fairly widely accepted, is that policy-determining officers should be elective (and when I use the word elective without qualification, I mean elective

by the people), and that officers who merely execute policies, without any share in determining them, should be selected by some other method. Mr. Dorman B. Eaton stated this in more detail when he said that we should elect those officers

> who frame or amend constitutions: who direct political policy: who make, interpret or repeal the laws: who adopt city ordinances; who control taxation, or who direct the expenditure of money[1]

To try to establish this rule as a general lesson of political experience would open up too many questions. It would also be rather unnecessary, as most of those present would probably accept it more or less completely if the question were now put to them. Without attempting, therefore, to discuss its general validity, let us adopt it as our starting point.

Before going further, however, let us try to make the rule a little more definite. It is sometimes taken for granted, in discussing the question as to which officers should be elective, that the two primary functions of determining policies and of executing policies—or, as Professor Goodnow has phrased it, of expressing the will of the state, and of executing the will of the state—are completely separated in their exercise and assigned to different organs. That which he has pointed out so clearly, and which is well recognized—namely, that the organs which are primarily policy-executing often discharge policy-determining functions—seems in this connection to be somewhat overlooked. Yet it has a most important bearing on our present discussion. Take, for example, such facts as that, in actual practice, the chief executives of the several states are becoming more and more policy-determining officers; that the supreme court of the United States is coming to be spoken of as if it exercised the functions of constitutional convention and legislature combined, in addition to its own; and, to drop from a great height to matters near home, that sheriffs and district attorneys determine to a great extent under what laws the inhabitants of their respective counties shall actually live. In the light of these facts, how is our general rule to be interpreted? Is it to be understood as meaning that officers should be elective only when their duties are formally and exclusively policy-determining, or is it the *actual* power to determine policy, irrespective of the nominal character of a given office, that we should take as our criterion? Here, again, there is room for discussion; but since it is

[1] *The Government of Municipalities*, p. 460.

the working realities of government that are of prime importance, rather than its mere boundaries on paper, I think we are forced to choose the latter alternative. I shall, therefore, re-state our general rule as follows: Wherever an officer, under actual conditions, and irrespective of the formal limits of his office, regularly exercises independent policy-determining functions, there you have a prima facie case for his election by the people.

But our rule as thus stated, if applied without qualification, would force us to rather peculiar conclusions. It might compel us here in New York state, for example, to demand the popular election of the clerk of the assembly. Manifestly it must be limited in some way, and a discrimination made between officers for whose actual policy-determining power some legitimate and reasonable basis can be found, and those whose exercise of such power is admittedly improper and illegitimate. Now among students it will probably be granted that, within any particular sphere of governmental action—federal, state, county or municipal—the power to determine policy should not be widely diffused among a number of independent, coördinate officals, but should be as far as possible concentrated. As Woodrow Wilson has put it:

> A government must act by some combined force which is the will of one person, or the will of many persons united,. . . . Elaborate your government; place every officer upon his own dear little statute; make it necessary for him to be voted for, and you will not have a democratic government.[2]

Some would go even further and lay it down as a hard and fast rule that in each sphere there should *never* be more than *one* controlling authority. Whether we go as far as this, or not, it is at least evident that the prima facie case for the popular election of any given officer may be rebutted by showing that his power to determine policy, on which the case is based, is itself indefensible. In other words, instead of being forced, wherever policy-determining power actually exists, to demand popular election as the logical corollary, it is always in order to avoid this necessity by showing that the power itself should be removed.

But here comes in another question. In any given instance, is it possible, as a practical matter, to remove it? In some cases this is

[2] Civic Problems—Address delivered March 9, 1909, at the Annual Meeting of the Civic League of St. Louis, pp. 3 and 8.

simple enough. Where, for example, the policy-determining character of the office is due to no other cause than the fact that it is now elective, the mere act of making it appointive accomplishes all that is necessary, and carries with it its own justification. Where the actual power to determine policies, however, is the result of other and more complicated conditions, unless we can find means to remove these conditions, the prima facie case for popular election remains unaltered.

So much for our general principle, and the qualifications under which I shall try to apply it. It must always be remembered, however, that, in attempting to decide whether any given office should be elective or appointive, special considerations may enter in that will far outweigh the general considerations above outlined. One must take account of such facts as the existence of great extra-legal organizations such as political parties, and their relation to the regular organs of government: of the delicate and gradually-evolved adjustment of these organs of government to one another; and even of the ingrained habits of political thought and action in the community which affect the whole working of governmental machinery. Conditions along any of these lines *may* conceivably be such as to render it inexpedient to make a particular office appointive, even though the latter be as devoid of all independent policy-determining power as that of a court clerk or the keeper of a county jail. Such conditions, again, may be temporary and easily overcome, or they may be deepseated and, for all practical purposes, unalterable. In any case, until we can overcome them, the proposal to make the given office appointive, however unanswerable from other points of view, must remain in abeyance.

We are now ready to take up certain specific offices and classes of offices, to inquire what our general principle means when applied to them, and to determine how far, if at all, it needs to be modified to fit each particular case. Omitting the federal government—since in that field we already have the short ballot—the first office on our list is that of governor.

There can be little doubt at the present time that the governor, almost as much as the president, is in a very real sense a policy-determining officer. There is a real question, however, as to whether a coördinate power to determine policy—as distinguished from the power of proposing policies, subject to the final decision of the legislature —is one which the chief executive should properly exercise. The prin-

ciple that the ultimate control, within the sphere of the state government, should be as far as possible concentrated would, if carried to its logical extreme, lead us to give the appointment of the governor to the legislature, as under the parliamentary system. Assuming for a moment that this would be the most desirable course, the practical question then arises—could we, by this action alone, deprive the governor of his independent policy-determining power, and limit him to the formulation and suggestion of policies? In other words, would the provision for his appointment by the legislature remove the prima facie case for keeping him elective. I think there is good reason to believe that it would not. The predominance of the executive over the legislature at the present time in the final and effectual (if not in the temporary or detailed) determination of policies is due to a far-reaching combination of causes, and would, I believe, continue (though to a less degree), even if his appointment were given to the legislature. The process which, according to Sidney Low,[3] is making the little group of leaders within the English cabinet more and more the masters, rather than the agents, of parliament, and turning parliament into a mere recording machine to register the decisions of those whom the electorate has really chosen, would be even more likely to follow if the parliamentary system were adopted in this country. It is an increasingly marked peculiarity of American political psychology that we prefer to concentrate our interest and attention on a single conspicuous leader, rather than on a legislative body. It has been said that this is because we are tired of the obstruction and "stand-pattism" that have resulted from our check and balance system, and from the character of our party machinery, and are in a hurry now to "get things done."[4] However this may be, the executive in whatever manner he might be chosen, would probably continue to monopolize popular interest, and, through his prestige and influence, to exert almost as great an effect on the determination of policy as he does at present. It is hard, indeed, to see by what means this character could be taken away from him. The prima facie case for popular election, therefore, would remain, and even if the legislature's part in choosing him should become as perfunctory, and as subordinate to a popular mandate, as that of the college of electors at the present time, there would still be no reason, according to our general

[3] *The Governance of England*, passim.

[4] Cf. J. T. Young, The Relations of the Executive to the Legislative Power; *Proceedings of the American Political Science Association*, 1904, pp. 49–51.

rule, for making the selection of an officer so vitally and increasingly expressive of the will of the voters even nominally more indirect than it is at present.

Moreover, looking at the practical side of the question, there is hardly a possibility that the proposal for the appointment of the governor by the legislature would ever be accepted by the voters. The proposition would come up against one of those ingrained habits of American political thought which are too strong to be overcome at least, for as far ahead as we can see.

Even if one considered the parliamentary system superior to ours, therefore, one would be inclined to decide in favor of the retention of our present method of selecting the governor. The executive is already beginning to coöperate more and more with the legislature, and the desired concentration and unity of action, though still far off, are being wrought out before our eyes. For the student there is an additional inducement not to interfere, for it is far more fascinating to watch such a gradual process of adjustment than to apply any ready-made remedy—and one cannot help suspecting that the final outcome will be something quite different from the parliamentary system, and better suited to the America of the twenty-first century. It may be, too, that the legacy of the seven years ending March 4, 1909, has been a certain sporting spirit—a feeling that we shall get our money's worth better by keeping hands off and letting the executive and the legislature fight it out! However this may be, I think we may consider the popular election of the chief executive as res adjudicata for present purposes, and turn to the next office on the list.

In this case, I imagine, if students should vote to leave things as they are, it would hardly be from any intense interest in the lieutenant governor, or in the spectacle of his constitutional development, viewed as a political, or as a sporting event. Seriously, it seems pushing theory pretty far if a merely contingent policy-determining [illegible] is to compel the popular election of an official whose ordinary [illegible] as presiding officer—except where he appoints the committees of the senate—have little more to do with the determination of policy [illegible] those of the governor's staff. Suppose the secretary of state, were to be appointed by the governor [illegible] succession might [illegible] ing a capable successor [illegible] under the present system? [illegible] this office any further

Let us take next a group of state officers—now generally elective—which includes the secretary of state, state treasurer, superintendent of public instruction, commissioners of public lands, agriculture, mines and railroads, trustees or regents of the state university, state engineer and surveyor in New York, and other positions of a similar character. The duties of these officers are mostly administrative in the strict sense of the term, and although some of them, for example railroad commissioners, have a considerable discretionary power in certain cases, and duties in regard to which the public holds strong views, they can be classed as policy-determining, if at all, only in so far as they are at present elective. The power to issue regulations is seldom possessed by any of these officers to more than a very slight degree, and if it should hereafter be conferred upon them, both our general theory and the example of the federal government would indicate that its final control should be as far as possible concentrated. This object could be accomplished, of course, merely by giving the governor the power of appointment and removal, and there would probably be fewer practical difficulties in the way of such a step in this case than in the case of any other officers. It would be almost impossible to discover any real distinction between the duties and general character of these offices on the one hand, and, on the other, those of the state superintendents of prisons, labor, charitable institutions, banks, insurance, or public works, the health and excise commissioners, and the large number of similar officers and boards who are now usually appointive. It would be interesting to see a comparison of the relative honesty and efficiency of the two sets of officers under the two different methods of selection. Very possibly such a comparison would not disclose any marked variation between them at the present time. However this may be, the pressure in the direction of more capable work in these departments, caused by the increasing technical demands made upon them, would probably be felt more readily by a single responsible appointing power than by those who now chose for us our elective officials.

In the case of one or two of the state officers somewhat different considerations enter in. Take first the attorney general. In his case there are peculiarly strong reasons, on the one hand, why the power of appointment should be given to the governor; and, on the other, certain arguments can be plausibly urged in favor of popular election. The former considerations were well presented in the New York constitutional convention of 1867, and subsequently came very

near prevailing as a result of the recommendations of the constitutional commission of 1872.[5] Their advocates, after citing the analogy of the president's cabinet, and recommending that the governor of New York be empowered to appoint most of the state officers and constitute them a cabinet to advise and assist him in the execution of the laws, went on to say that it was particularly important that the governor should be given the right to appoint the attorney general, since the latter was the head of the department upon which, above all others, devolved the duty of seeing that the laws of the state were properly enforced. It was absurd, they said, to hold the governor responsible for the execution of the laws, while denying him the appointment and removal of the officer upon whom he must chiefly rely in meeting this responsibility.

On the other hand, it is urged that, since the attorney general has the duty of prosecuting the other officers of the government in case of illegal action on their part, and of punishing political, as well ordinary criminal, offences, and since he is allowed a good deal of discretion as to whether or not to prosecute in any given case, he exercises independent policy-determining functions and should, therefore, be elected by the people. It is further asserted, from this point of view, that, if the governor were given the power to order the attorney general to prosecute in any case where he saw fit, and if it were made the duty of the latter to obey such order, as is now the case under the "executive law" of New York state,[6] the chief argument for his appointment by the governor would have been met. New York, however, has recently had an example of an elective attorney general out of harmony with the governor, and although, as far as the writer knows, no special crisis occurred to test this relationship, it was sufficiently evident to all that the mere formal power of control would have been of little practical value, and that no loyal or efficient execution of the governor's policy could have been expected under such conditions.

In short, is not this one of the cases where such independent policy-determining power as now exists is improper, and should be removed? This could be accomplished by the mere act of making the attorney general appointive, since his policy-determining character is not due to any widespread or complicated causes. Our present inclination to make a distinction between the general duty of the governor to

[5] Cf. Lincoln, *Constitutional History of New York*, vol. ii.

[6] Consolidated Laws of 1909, ch. 18, art. 6, secs. 62 and 67.

see that the laws are faithfully executed, and the particular duty of the attorney general to prosecute for violations of them, is hardly more than a fortuitous outgrowth of the constitutional conditions with which we are familiar. It ought not, therefore, to be a difficult matter to persuade people to place the final control over this whole field of action in the hands of the governor, and hold him to an increased responsibility for its exercise.

As to the other argument in favor of election, it should be remembered that the governor, himself, while in office, is not liable to prosecution, and that the strongly partisan character which is the almost inevitable accompaniment of the actual process of popular election tends to prevent rather than to encourage a fearless and independent attitude on the part of the prosecuting officer toward his fellow officials. Besides, if it is once admitted that you must *elect* an officer to hold a club over other officers, why is it not logically necessary to elect still another officer to hold a club over him, and so on ad infinitum? The practical effect of this line of reasoning is, as Woodrow Wilson states it in the address above quoted:

> Put in other elected officers to watch those that you have already elected, and you will merely remove your control one step further away—

i. e., from the voters.

Somewhat similar considerations apply to the only other state office which I am going to discuss. This is the office of comptroller or auditor. It cannot be said that the holder of this office is in any true sense a policy-determining officer, yet it seems to be very widely believed that in his case an exception should be made to our general rule. All will agree that sound business experience requires us to keep him as far as possible independent of the rest of the state officers, upon the legal propriety of whose financial dealings he will have to pass judgment. The only question is as to how this independence may best be secured. Some will tell us that, in this country, the accepted way of making any officer independent is to elect him, and let him derive his authority from the people, just as do the chief officers of the government. But is this the practice in the business world? Is it the stockholders of a corporation themselves who engage an outside expert accountant to audit the accounts for the year? Or take the case of the federal government, or of England. In the federal government the comptroller of the treasury is appointed by the president and senate, yet

he occupies a peculiarly independent and responsible position, as far as his duties are concerned.[7] In the English boroughs, to be sure, the auditors are elective, but the comptroller and auditor general of Great Britain is appointed by the crown. He enjoys a life tenure like that of judges, and is removable only on address by both houses of parliament. If we wished to follow this latter model we could give our comptrollers and auditors a legally protected tenure during good behaviour; though it is probable that, instead of making them removable only by impeachment or on address by the legislature, it would be better to have them removable by the governor on the filing of charges, and after a hearing, as in the case of various local officers in New York state. Such a method would have its defects, but would be more likely in practice to produce independence and efficiency than is our present system.

In the case of all the state officers, in short, it is hard to see any reason why the general analogy of the federal government should not apply. This view (except as regards the state auditor or comptroller) has recently been taken in a very interesting document published in Oregon by the same group of men who secured the adoption in that state of the initiative and referendum, the direct primary, and the recall.[8] Coming from this source, such a proposal is particularly interesting, not merely because of the promise which it gives of concrete results, but because of its indication that this typical group of progressives do not consider a reduction in the number of elective offices undemocratic. The document in question contains, among other things, a draft of a number of amendments to the constitution of Oregon. Some of the sections of Article V. of this draft are, in part, as follows (certain provisions as to local officers and other matters being here omitted):

SECTION 5. The governor shall take care that the laws of this state be faithfully executed. . . . He shall have power to suspend or remove any officer he appoints and such suspension or removal shall not be subject to appeal; but in every such case he shall file his order of suspension or removal with the secretary of state, and also the reasons

[7] Cf. Fairlie, *The National Administration of the United States*, pp. 120–1; H. C. Gauss, *The American Government*, pp. 442–4.

[8] Introductory Letter, Additional Explanation, Bill for a Law and Suggested Amendments to the Constitution of Oregon; published by William S. U'Ren, Oregon City, Oregon; C. H. Chapman, Oregonian Bldg., Portland, Oregon; and others.

therefor upon written demand of the persons suspended or removed, or he may do so without such demand. . . .

SECTION 6. The governor shall appoint the attorney general, the secretary of state, state treasurer, state printer, superintendent of public instruction, secretary of labor, and the state business manager, who shall constitute the cabinet, together with such other cabinet officers as may be provided by law. They shall hold office during the governor's pleasure. These officers shall perform such duties as may be required by this constitution and the general laws, or ordered by the governor. A state auditor shall be chosen by the legal voters of the state at the general election in November, A. D., 1912, to serve two years. At the general election in November, A. D., 1914, a state auditor shall be elected for a term of six years. The auditor's regular term of office shall be six years and his duties, powers and salary shall be fixed by law.

SECTION 7. The governor and the members of the cabinet. . . . shall be citizens of the United States and of Oregon and shall have resided in the state not less than five years before their appointment, except that the governor shall not be limited to citizens of Oregon in employing the state business manager.

SECTION 8. The state business manager, subject always to the governor's approval, shall so organize, consolidate, supervise, direct and manage the business departments and affairs of the state (these being such as deal largely with money and money's worth) as to obtain the highest possible efficiency in the state's service and full value for the public money. He shall give counsel as to business matters when called upon by the chief officers of counties and other local governments. He shall advise the governor in writing of all possible opportunities and practical plans for the betterment of the public service, business and the methods and laws of its administration, both for the state and local governments. The governnor is authorized to make such rules and regulations as may be expedient to obtain these results, subject always to the constitution and laws of Oregon, and the decisions of the courts that any such rule or regulation is in contravention of the constitutional rights and liberties of citizens. The state business manager shall perform such other duties as may be required by law or ordered by the governor. The governor is authorized from time to time to allow and agree for such salary for the state business manager as will be sufficient to get the best man for the position, but subject always to reduction by the people on referendum vote.

It may be mentioned, as an interesting indication of the tendency of these proposals, that another section gives the governor and his cabinet the right to appear on the floor of either house of the legislature, to introduce and support "administration measures," which are to be officially known as such, and to submit to a referendum vote

of the people any administration measure rejected by the legislature. One wonders what ex-Senator Spooner, or Senator Bacon of Georgia. would say to such an abandonment of the orthodox tradition as to the separation of powers! The proposal is but another instance of the tendency, of which I was speaking a moment ago, to bring the governor and the legislature closer together.

The next set of offices to discuss would naturally be the judiciary—but I may as well admit that this is an issue which I am going to avoid. The problem of an elective versus an appointive judiciary has been discussed almost ad nauseam, with the clear weight of *authority*, as far as the general question is concerned, on the side of those who favor appointment. In so far as a new problem is being created, or an old problem intensified, by the increasing tendency of American courts to exercise what is indisputably a policy-determining function, this new element in the situation is by no means suffering from any lack of discussion, nor is it likely to in the near future. I trust, therefore, that you will not be disposed to censure the omission.

I might note, however, that the special argument, just suggested, for popular election does not apply to chancery or probate courts or to inferior local courts. As to the method of selecting judges for these positions, Mr. Dorman B. Eaton's suggestion[9]—namely, that they be appointed by the judges of the higher courts, very much as commissioners are appointed by federal circuit courts for acting as magistrates throughout the United States—is worthy of serious consideration. As Mr. Eaton points out, there is a precedent for such a step in the constitution of the United States.

We come finally to local officers, among whom I shall consider only those of the county—the short ballot principle in its relation to city officers having often been discussed, and recently carried into practice in a number of cities. There are, first, the county commissioners or supervisors, elected at large, or by towns, or by special districts. In so far as the county is permitted to exercise any legislative power, such power is usually exercised by this county board. It is properly the policy-determining organ of the county for local affairs. There will be little question, therefore, as to the propriety of its direct selection by the voters.

Just as little can there be any doubt—after what we have concluded in the case of the administrative officers of the state—that a large

[9] *The Government of Municipalities*, p. 444, ff.

group of county officers, now elective, should be transferred to the appointive class. This group includes coroners, registers of probate, registers of deeds, clerks of court, county clerks, county assessors, county treasurers, county surveyors, superintendents of schools, superintendents of the poor, county health boards and similar officers. That there was some realization, even in the days when Jacksonian democracy was rampant in the land, of the danger of making such minor officers elective, is shown by the following excerpt from the debates in the New York constitutional convention of 1846. Mr. Simmons, speaking, as the context shows, with some warmth:

> There seemed to be a wonderful charm in adding names to the ticket. The complaint in his county was that there were so many elective officers—because it imposed on the people so much labor. He heard a gentleman from Clinton county say—and he lived among a very intelligent population too—that there were so many names on the town ticket now, that he would pledge $100 that he could get his horse elected supervisor, and nobody would know it.[10]

But to come back to the matter in hand. Most of the officers just mentioned are, at present, distinctively local officials, though increasingly subject to state supervision. It is therefore proper that they should be appointed either by the county board, or, if it be desired to centralize responsibility as in state and city, by a chief executive officer to be created for the county. There is already some precedent for this latter method in various parts of the country.[11] It is also interesting to note that the solution adopted in the Oregon plan above referred to is along this line. Article VI of the Constitutional amendments reads in part as follows:

> SECTION 1. The legal voters of each county shall choose a board of three directors of county business to serve for four years. Their official title shall be the "board of directors for the County of———." The first election of directors shall be at the November election, A.D. 1912, for four years; thereafter their term of office shall be six years, beginning with the board to be elected in November, 1916, subject always to recall petition. More than one of the members may be included in one recall petition if the causes of complaint are the same.

[10] Croswell and Sutton's *Debates of the New York Constitutional Convention of 1846*, p. 390.

[11] Cf. Fairlie, *Local Government in Counties, Towns and Villages* (American State Series), p. 79, and the authorities there cited. See also Professor Fairlie's conclusions as to the election of various county officers, pp. 115, 117 and 131.

The legislative assembly shall forthwith provide by law for the election of the board from the county at large. The method of election shall be such that any candidate who is the choice of so many as one-third of the electors of the County actually voting for directors shall thereby be elected. . . . The directors shall receive such compensation as is now paid to the county commissioners until that shall be changed by the voters of the county.

SECTION 2. It is the duty of the board of directors to plan and order all the public affairs and interests of the county. The board shall make all expedient rules and regulations for the successful, efficient and economic management of all county business and property, subject to the constitution and laws, and subject also to the vote of the people of the county. The board shall employ a county business manager, who shall be the chief executive of the county. He shall be a citizen of the United States, but the board shall not be limited to Oregon in seeking a man for the position.

SECTION 3. The salary of the county business manager and of all other county employees shall be in the discretion of the board of directors, except in so far as the same may be fixed from time to time by the legal voters of the county. No salaries of county officers shall be fixed by the legislative assembly. All subordinate officers and employees of the county shall be employed by the county business manager, except only that the board shall either audit the county bills or appoint a county auditor. The county business manager shall not be a member of the board. The county judge, justices of the peace and constables, so long as the law provides for such officers shall not be within the jurisdiction of the county business manager, nor of the board of directors, and their compensation shall be as now provided by law until changed by vote of the people of the county.

For coroners, registers and clerks of court Mr. Dorman B. Eaton has suggested the same method of appointment by the higher state judges as that above mentioned in the case of local judges.[12]

To the office of county auditor the same considerations are applicable as were submitted in the case of the *state* comptroller or auditor. Some day, however, we may come to the point of letting this latter official audit local accounts, just as the local government board audits those of all local organs of government in England except the borough. There is some evidence of a tendency in this direction in the plan for uniform local accounts and state supervision adopted in Ohio, and in the powers of investigation into local finances recently given to the comptroller in New York state.

It is when we come to the distinctly law-executing officers of the county—the sheriff and the district attorney—that the most difficult

[12] *The Government of Municipalities*, p. 455.

problem must be met. Owing to the combination of legislative centralization and administrative decentralization which Professor Goodnow has so fully analyzed and discussed,[13] there is no doubt that these officers are now, in practice, policy-determining, and express the will of the local community. If we answer that it is entirely improper that they should be so, the question then arises: is it feasible at the present time to deprive them of such power? In their case, merely to take them off the ballot and make them appointive is not, in itself, going to accomplish this result. The original problem is complicated by the introduction of another—that of the proper distribution of powers between the central and local organs of government. Suppose that, without changing the attendant conditions, you took the selection of sheriffs and district attorney in rural counties, and of district attorneys in urban counties, away from "the people" and conferred it upon the local appointing authority, where the control of the police department in cities is often located. This would certainly be an improvement over the present method. It would shorten the ballot and concentrate responsibility; but instead of settling the whole question, it would merely transfer the power improperly to determine local policy from the local law enforcing officers to the local appointing authority. Logically this latter problem does not concern the immediate question which we are discussing. Practically the failure to settle it would, I think, tend to keep both questions open—that of the method of selecting officers, as well as that of the apportionment of state and local functions. The power to dispense informally with the execution of state laws, whether that power be vested in sheriffs and district attorneys, or in mayors and county boards, will always tend to produce corruption and bad local government. Such conditions, as we have seen in the attempt to regulate the liquor traffic, are apt to result in the demand for increased administrative centralization, which, again, is thoroughly desirable within reasonable limits, but which is far from offering a complete solution of the problem. Take what has actually happened in numerous cases. The demand for centralization has been answered at first by the establishment of optional state control over the action of local officers. As this has proved ineffectual, a more drastic, permanent control has been substituted. A state constabulary has been created, or the officers who control the police forces of cities have been made appointive

[13] *Politics and Administration*, chap. v.

and removable by the governor. In the long run, however, the attempt, by means of increased administrative centralization, to deprive the local community of its informal policy-determining powers in matters where the desire for local autonomy was intense has everywhere broken down. Centralization had to be made more and more drastic, and the state was forced on from one point to another until it was compelled to take over most of the powers of local government to an extent which public opinion refused to support. On the other hand, in Massachusetts, after the attempt to override local sentiment had been given up, the state-appointed police were found to be most valuable and efficient for the enforcement in local communities of all general state laws which were backed up by local opinion, or which, whether local opinion favored them or not, the average public opinion of the state was determined to have enforced.[14]

This seems to indicate the general lines on which the problem must be solved. Give the locality power to determine its own policy in such matters as the sale of liquor, the suppression of gambling, etc., and, even at the expense of all theories as to the proper distribution of state and local powers, make your statute book represent effective public convictions, and not merely what Mr. Jerome calls "moral yearnings." Make your local community in this way reasonably reconciled to its laws; take away the fear that administrative centralization means dragooning it into submission on highly controverted questions, and you will remove a large part of the present local prejudice against appointment by some state authority of the local law-enforcing officers. There is no question but that theoretically the latter are state, rather than local officials, and should be centrally appointed.[15] If it became practically expedient, as for example in cities, logic might be satisfied by the local appointment of a separate officer for the enforcement of local ordinances—in New York City the corporation counsel could easily be developed in this direction; but probably if the locality were allowed more voice in determining the policies to be applied to it, it would care much less whether or not a state officer executed them.

Before this system of central appointment could be deemed thoroughly desirable, however, another danger would have to be guarded

[14] On this whole question cf. C. M. L. Silva, *Centralized Administration of Liquor Laws*, Columbia Univ. Studies in History, Econ. and Pub. Law, vol. x, no. 3, 1899.

[15] Cf. the Oregon plan; constitutional amendments art. v sec. 5.

against. In the appointment of state officers the importance of the positions and the attendant publicity, as well as the increasing need for a high degree of efficiency, would probably tend to prevent improper partisan influences from playing too large a part. The same would probably hold true, though to a less degree, in regard to the local appointment of local officials. In the case of local officers appointed by the governor, however, these safeguards would be far less available. Experience shows that the danger of local patronage being used to build up a state machine is no imaginary one. In the federal government, for example, it is in the case of the marshalls and postmasters, not in that of cabinet officers, that partisanship most often causes bad selections. As for the experience of the states, even overlooking, as imperfectly analogous, the history of the New York council of appointment, a quotation from the debates in the New York convention of 1846 will show what happened when the governor appointed county judges. Mr. Patterson speaking:

"How were judges appointed now? The constitution, it was true, conferred the power of appointment on the governor and senate; but did they exercise that power in point of fact in the selection of judges? By no means. The judges of your county courts were not appointed by the governor and senate. Practically they were appointed by a caucus, held in the county where the judges were to officiate. The people got together in caucus and then made their nominations for the office of judges of the county court, and these names were sent to the governor. And what governor ever refused to send in these names for confirmation to the senate? And what senate had we had that had declined to confirm nominations thus made through a caucus of the party of the executive? Whichever party had the governor they made their caucus nominations, and that was virtually an appointment. Mr. Patterson recollected a few years ago—and he had had occasion to relate the circumstance to a smaller body than this, in this city—some gentlemen in Franklin county got together and resolved themselves into a democratic-republican county convention—A. B. was called to the chair, and C. D. appointed secretary—and it was found that E. F. and G. H. had a majority of all the votes—and it was, therefore, resolved unanimously that they be recommended to the governor as judges. The proceedings were sent down here in due form to the governor—this was in 1834—and he supposed, seeing that it was a democratic-republican convention, that it was all right. That was strong enough to suit Governor Marcy, and he sent E. F. and G. H. to the senate and they confirmed the nominations—when it turned out that he had appointed a couple of whigs instead of a couple of democrats. (Laughter.) This was a practical illustration of the mode of appointing judges

that had been in vogue some twenty years. Mr. Patterson knew not whether similar tricks had been played off on other governors. It was enough to know that governors would swallow what was sent to them in this way, if they were only the right kind of names.[16]

In the debates of the Pennsylvania convention of 1838 we find a similar statement—all the more striking because it was meant for a defense of the governor against those who charged him with misusing his then very extensive patronage, Mr. Banks speaking:

He knew it had been the practice with governors of Pennsylvania, when members of the legislature presented to them letters of recommendation for officers in their counties, justices of the peace, judges and other officers, for the governor to say to them: "Gentlemen, if you are desirous that this man should be appointed, endorse this paper. I know nothing of his character, but, if you will give your names it will be some guarantee for his character." Well, when members of the legislature impose upon the governor, is he to be charged with a violation of his duty, or is he to be condemned for a dereliction of duty when he has taken all the pains in his power to ascertain the character of these men before they were appointed? But the governor has been imposed upon in many instances, and the people have become dissatisfied in consequence of these impositions, ...[17]

In another speech in this same debate Mr. Sergeant, the president of the convention, stated that many of the governor's appointees to local offices were selected as a reward for campaign services, and were not only illiterate, but so totally unqualified for their positions that it was a common practice for them to hire deputies to perform their duties for them, while they devoted themselves to building up a political machine in the county.

In Florida the constitution of 1868 provided for the appointment of many of the county officers by the governor. Perhaps this provision was put in by the republicans to assist them in retaining control of the state. At any rate, after democrats recaptured the govenorship in 1876, the process of selecting local officers, according to Professor Fairlie's description, was as follows:

In practice, ... the formal method of appointment was a device for preventing negro control of local offices in the "Black Counties." On election day, democratic primary elections were held in separate polling places for nominating candidates for the

[16] Croswell and Sutton's *Debates, etc.*, pp. 102–3.

[17] *Proceedings and Debates of the Pennsylvania Constitutional Convention of 1837–8*, reported by John Agg; vol. ii, p. 312.

various appointive offices, and the candidates thus chosen were regularly appointed to the positions. When the negro vote had been eliminated, the elective system was restored[18]

—this was in 1885. It has also been shown that, when, in prohibition states, the governor was given power to appoint the police boards of cities, he often used this power to build up a party or personal machine.[19]

For these reasons it is essential to devise some method by which local officers appointed by the governor shall be chosen on the basis of efficiency, and retained in office as long as their efficiency continues. Indeed, in the case of all the offices transferred to the appointive class, the establishment of some system of this sort in connection with the change in the method of selection is a matter of the greatest importance. The attempt which has been made in the Oregon proposals to grapple with this problem is interesting. Section 10 of Article 5 of the amendments reads as follows:

Appointment or removal of any officer or employee, because of personal preference, or for political or party advantage, or because of membership in a party, or for any reasons of partisanship, is hereby condemned and prohibited. All the governor's cabinet officers except the state business manager are excepted from this section. On every appointment or removal of a public officer or employee the officer making the appointment or removal shall certify that he has not made it because of personal preference, friendship, favor, or dislike, nor because of or for the advantage of any political party, faction or association; nor on account of membership or political activity in any political party or organization, except only in the case of the above members of the governor's cabinet.

It is hard to see how this provision can be expected to prove a real or satisfactory solution of the problem. It is more in the nature of a pious exhortation to the appointing authority than of those shrewd devices by which our Anglo-Saxon forefathers have been wont to remedy defects in their government. The natural solution, and the one which, in spite of its disadvantages, offers the greatest practical hope of success, is along the lines already mapped out by the civil service reformers. In the case of district attorneys, especially if their appointment were to be given to the attorney general, the legal requirements of the position might prove sufficient to compel the selec-

[18] *Local Government, etc.*, p. 50.
[19] Cf. Sites, *op. cit.*, pp. 77–8.

tion of reasonably competent men. The ordinary rules of the classified civil service could hardly be applied to such offices. The rules recently established for the diplomatic and consular services, in regard to classification, transfers and promotions might, however, be applicable to some extent. In the case of the sheriff, or of such locally appointed officers as the county clerk, county treasurer, register of deeds, etc., there seems to be no reason why the present civil service laws of New York state could not be made use of. If the system employed in the Philippines, of appointing the higher officers in the departments only from among the next lower grades, and on the basis of their records in the service, proves all that is hoped, it may eventually offier a model for some of the state offices. In this direction, as is well known, there are still many problems to be solved, but the progress of the short ballot movement will necessarily be bound up with, and to some extent dependent upon, the further development of civil service reform.

There may, however, be a limit to the extent to which party patronage should be cut down, until the parties have had a chance to accustom themselves to the new conditions. Undoubtedly the reduction in the number of elective offices will decrease the amount of machinery which the parties will have to maintain, and therefore lessen the need for patronage. Also, if the plan for state payment of campaign expenses can be satisfactorily worked out, this will furnish a new means of party subsistence, and thus work toward the same end. The amputation of some of its overweight of "organization" will undoubtedly leave the party freer to turn its attention to policies, and to that direction and control of government action which is the essence of real party government. As long as the departments of government remain separate, however, and to some extent in need of having their action coördinated and unified by forces working from without, the party, as the chief of these forces, must be kept strong and efficient. Long before there were many elective offices to fill, the use of patronage for party purposes had been developed in Pennsylvania and New York to a tremendous extent—indeed, strange as it may seem to us now, it was in the hope of curing this abuse that so many offices, theretofore appointive, were made elective in 1838 and 1846. Doubtless when such issues as slavery and the right of secession were still unsettled, when the nationalizing influence of party was far more requisite than it is today, and the demands for administrative efficiency infinitely less, there were reasons which no longer exist for the sacrifice of this efficiency to the upbuilding of

powerful party organizations. Also, even for that time, the use of patronage for party purposes was probably excessive, and far beyond what legitimate party needs demanded. All that I wish to suggest in this connection is that a return to the type of governmental structure which we started out with may not at once place our parties in a position where the use of patronage will be entirely unnecessary. However much may be accomplished, therefore, in this direction, we must remember that the political habits of generations cannot be unlearned in a day. If the necessary work of the party organizations is not to suffer, the means of support to which they are accustomed must not be too suddenly withdrawn.

There are many other phases of this subject which one is tempted to discuss—especially some of the collateral effects which may be expected from a reduction in the number of elective offices, and which, in turn, may be expected to react upon the governmental system and therefore influence us in our decision as to just what offices should now be made appointive. No thoroughgoing change of this kind can be put through without a considerable dislocation of that whole complicated series of adjustments which go to make up the organized political life of a community. To venture out into this field, however, would take one far beyond the limits of a paper of this kind—limits, which, in my case, I fear, have already been exceeded; but the short ballot is a question the practical public discussion of which has only begun, and anyone who is interested in continuing this discussion may rest assured that for years to come he will have ample opportunities for doing so.

TENDENCIES AFFECTING THE SIZE OF THE BALLOT[1]

BY CHARLES A. BEARD

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In seeking to discover whether we are going in the direction of the short ballot, I am not hunting for the "failures" of American democracy, but for those evidences which show that democracy is forging the instruments with which to achieve still greater things. I am attempting to find out whether we are still hopelessly involved in political tinkering and electoral futilities or are coming into a recognition of the really effective way of meeting the tremendous burden of administrative responsibilities which the epoch of social democracy has brought upon us. The age of *laissez faire* is dead; here and now, we are in the midst of a steady increase in governmental functions whether we like it or not. On every side, there is a pressure for a multiplication of public enterprizes, which cannot be stayed or turned aside by phrases or exclamations. I am, therefore, addressing myself to the question: Is democracy forging the electoral weapons with which to accomplish victories?

In seeking an answer to this question, I do not think that I shall do my whole duty by merely examining ballot legislation or constitution-making during recent years. Indeed, at the very outset, I am as much concerned with what publicists and university scholars are thinking about this matter I am with returns from legislative reference bureaus. The views now entertained in our universities will become, in due time, the views of the country as a whole; the thought of our universities though not proclaimed from the house tops often points the way to the tendencies of the coming generation. The student of political science, who enjoys that academic freedom which is his right, is not disturbed by fluctuations in common

[1] This paper is based largely upon an article published by the author in the POLITICAL SCIENCE QUARTERLY for December, 1909.

steel or by the reorganization of the Chicago and Great Western; neither is he obliged to "nurse" a congressional or aldermanic district by telling the people that they should cling with hooks of steel to the priceless privileges of electing the municipal court clerk or the county coroner.

With this view in mind, a circular was sent to the instructors of political science in the larger universities and colleges and to publicists of national repute. The replies to this inquiry into current thought as to the ballot shows that there is a substantial unanimity of opinion in favor of reducing the number of elective offices, for the purposes of concentrating all political forces on efficient government. Our circular brought a veritable harvest of letters from college presidents, instructors in political science, eminent publicists, and state and national officials of broad experience—none of them professional "reformers." All of them however, believe in popular government and efficient government, and all of them agree that one of the most fundamental obstacles in the way is the diffusion of public attention over such a wide political battle ground that the enemy carries every point of vantage.

Fortunately we are not restricted to private communications on this matter of current opinion on the ballot. If we turn to the latest published works of men who have given the most serious attention to problems of American government we can find a host of witnesses against our present electoral methods. Many years ago Professor Goodnow made the long ballot the center of an attack. The imperative necessity for a simplification of our electoral machinery is the burden of the argument in his *Politics and Administration*. Long before Professor Goodnow took up the cudgels against our Brobdignagian ballot, Mr. Charles Nordhoff had declared

> The folly of obliging the people to decide at the polls upon the fitness for office of a great number of persons lies at the bottom of almost all the misgovernment from which we suffer, not only in the cities but in the states. It is a darling device of the political jobbers and a most successful one; for, under the hollow pretence that thus the people have greater power, they are able to crush public spirit, to disgust decent and conscientious citizens with politics, to arrange their "slates," to mix the rascals judiciously with a few honest men wherever public sentiment imperatively demands that much, and to force their stacked cards upon the people.[2]

[2] *North American Review*, vol. cxiii, p. 327 (1871).

In 1879, Mr. Albert Stickney expounded the doctrine of the short ballot in his *True Republic*; Dr. Dallinger, in his *Nominations for Elective Offices*, and Dr. Merriam, in his recent work on *Primary Elections*, make strong pleas for a material reduction in the number of elective offices; and Professor Fairlie, in his volume on local government, concludes that the attempt to apply the elective principle universally has had the paradoxical effect of defeating its own purposes. Lest I should fall into those vices which we are condemning in the long ballot, I will not enumerate the entire catalogue of publicists who have pledged their support to the short ballot; but will conclude by putting at the bottom of my list—which is bad politics but good from a literary point of view—the name of President Woodrow Wilson. In an address delivered last spring, President Wilson put the whole case in his characteristically precise and effective manner.

> Elaborate your government; place every officer upon his own dear little statute; make it necessary for him to be voted for; and you will not have a democratic government. Just so certainly as you segregate all these little offices and put every man upon his own statutory pedestal and have a miscellaneous organ of government, too miscellaneous for a busy people either to put together or to watch, public aversion will have no effect on it; and public opinion, finding itself ineffectual, will get discouraged, as it does in this country, by finding its assaults like assaults against battlements of air, where they find no one to resist them, where they capture no positions, where they accomplish nothing. You have a grand housecleaning, you have a grand overturning, and the next morning you find the government going on just as it did before you did the overturning. What is the moral? . . . The remedy is contained in one word: *simplification*. Simplify your processes, and you will begin to control; complicate them, and you will get farther and farther away from their control. Simplification! simplification! simplification! is the task that awaits us; to reduce the number of persons to be voted for to the absolute workable minimum—knowing whom you have selected; knowing whom you have trusted; and having so few persons to watch that you can watch them.[3]

In turning now from what men think about the ballot to a survey of concrete tendencies, it is necessary to call attention to the fact that in many instances where the ballot has been simplified, it has not been the result of a conscious purpose to realize any theoretical ideal. In fact, it would be difficult to discover many institutions in America founded on abstract doctrines. For example, we are informed by

[3] *Civic Problems*. Address delivered March 9, 1909, at St. Louis.

Professor Commons that the question of an elective or appointive railroad commission in Wisconsin was decided upon the eminently practical ground as to which of the contending forces in the state was to control the new board.

"The contest on that point," he says, "turned mainly on the method of selection. It is quite noteworthy that the railways contended for election while the governor and legislative majority were for appointment."[4]

This is, of course, a curious illustration of the way the elective system may work and an unconscious argument for the short ballot.

If we take governors' messages as a fair index of the tendencies of political opinion on the question of the electoral machinery, we discover flat contradictions. Governor Hughes, in his inaugural address of 1909, said "Responsibility to the people is the essential safeguard of free institutions. This does not mean the election of all or even of a great number of administrative officers, for undue burdens upon the electoral machinery would defeat its purpose. But it would seem to imply that distribution of administrative powers should have as its correlative the proper centralization of responsibility."[5] Five years earlier, Governor Bates, in recommending the adoption of the federal plan of administration by Massachusetts, pointed out that:

[4] *Review of Reviews*, vol. xxxii, pp. 76 ff.

[5] Since this paper was read, Governor Hughes has come out definitely for the short ballot. In his message of January 5, 1910, he said: "There is just and widespread demand for improvement in election methods. As I stated in my last annual message, progress in solving the problems of state government would seem to involve the concentration of responsibility with regard to executive powers To accomplish this there should be a reduction in the number of elective offices. The ends of democracy will be better attained to the extent that the attention of the voters may be focused upon comparatively few offices, the incumbents of which can be held strictly accountable for administration. This will tend to promote efficiency in public office by increasing the effectiveness of the voter and by diminishing the opportunities of political manipulators who take advantage of the multiplicity of elective offices to perfect their schemes at the public expense. I am in favor of as few elective offices as may be consistent with proper accountability to the people, and a short ballot. . .

It would be an improvement, I believe, in state administration if the executive responsibility were centered in the governor who should appoint a cabinet of administrative heads accountable to him and charged with the duties now imposed upon elected state officers." Proposals to increase the terms of assemblymen to two years and senators to four years and to make appointive some of the chief state officers now elective are pending the New York legislature.

a completely harmonious system cannot be expected where heads of departments are elected separately and are nowise responsible to, but on the contrary, are independent of the governor and each other.

In the very same year (1904), however, Governor Blanchard of Louisiana recommended the election of a large number of officials then appointed by the governor, and within a short time his recommendations were enacted into law. The year before Governor Blanchard began his warfare on appointive offices, Governor Toole of Montana, declared himself in no uncertain tones:

> The people should elect all important officers of the state government. Under the law as it now stands, the governor of the state appoints the state examiner, state inspector, state coal mine inspector, steam boiler inspector, commissioner of agriculture and labor, state veterinarian, registrar of the state land office, and state land agent and game warden . . . It is the system that is reprehensible —a system which is inconsistent and inharmonious with the genius and spirit of our institutions in its attempt without reason or necessity, to mingle or fuse together disagreeing elements of a democracy and a monarchy. In short, in my opinion, executive appointments or patronage, if you please, and popular sovereignty are antagonistic elements in our form of government and ought to be abandoned.[6]

So far as governors' messages reveal any tendency in the matter of the long or short ballot, we may conclude that in the north and east the sentiment is in favor of administrative centralization and responsibility while in the south and west opinion still favors the blanket ballot and its concomitants.

A survey of the newer constitutions results in the conclusion that our fellow citizens, so far as they have any opinion at all on the matter, still believe in the power of the ballot to do any kind and any amount of work. The new Virginia constitution of 1902 made the treasurer, the secretary of state, and the superintendent of public instruction elective, whereas they were formerly selected by the legislature. In the Oklahoma constitution, not only are the old executive officials chosen by popular vote, but the newer officers—superintendent of public instruction, insurance commissioner, state examiner of state and county accounts, commissioner of labor, mine inspector and commissioner of charities are likewise elected. Happily we may say that there is no tendency to reduce the terms of state officers in order to

[6] Digest of Governor's Messages, 1903, *N. Y. State Library Bulletin*, p. 29.

secure a more frequent recurrence to popular elections. Indeed, as Professor Dealey points out,[7] the tendency is quite in the opposite direction, and this of course has a decided effect in simplifying the ballot, especially for elections to local offices and the state legislature. In fact, in the Alabama constitution of 1901 the terms of all state officers were extended from two to four years, and even in Oklahoma the governor's term is fixed at four years.

A study of the state laws creating important new offices and boards during the period 1900–1907, the results of which I have printed elsewhere,[8] shows that the movement toward the transformation of appointive into elective offices is confined to the southern and western states where the comparative simplicity of economic life does not create the same pressure for administrative efficiency which we find in the north and east. In the south and west are to be found the greater number (all but two)of the newly created elective state offices, while the most important new appointive offices, the public service commissions, have been established in the middle and eastern states. To a certain extent there is some encouragement in this: as soon as burdens of government become heavy and complex there is a tendency to simplify the methods by which popular control may be exercised.

This is especially noticeable in the recent developments in municipal government. It was the wreck of the city and the ruin of her finances that led Galveston to adopt the commission plan which is a device for drastically simplifying the government of a municipality—a device, perhaps, too drastic in its results—but nevertheless indicative of an important tendency in all our large cities where the burden of administration is so great that efficiency can be secured only by a heroic concentration of power.

It would be difficult to find a report of a recent charter commission favoring a return to the old system of elective administrative boards. In New York, the tendency had been in the other direction for more than a decade, so that in the election of November 2, 1909, the voters had only eighteen offices to fill (including three justices of the supreme court of the first district, four coroners, sheriff, county clerk, district attorney, and register). The purely city and borough officers chosen were the mayor, comptroller, president of the board of aldermen, borough presidents, and aldermen. It is now proposed to reduce the size of the ballot by removing the coroners from the elective list.

[7] *Our State Constitutions* p. 33.

[8] THE POLITICAL SCIENCE QUARTERLY for December, 1909, p. 597.

A "simplified ballot with as few names on it as possible" was the first recommendation of the recent Boston charter commission, and this recommendation was embodied in the new charter. There can be no doubt about the fact that our municipalities are moving rapidly in the direction of a simple government adequately controlled by simple electoral machinery.

In conclusion we may say, with Carlyle, when it grows dark enough we can see stars. When the complicated electoral machinery breaks down completely, when the sheer necessity for getting important governmental work well done becomes imperative, when the ballot get so big that the voting booths will not contain it, we can be brought to see that democracy can function well only through simple government.

DISCUSSION

Prof. Henry J. Ford of Princeton University opened the discussion. He characterized the present ballot monstrosity as a reductio ad absurdam of the present system. It is easy to obtain assent to the proposal that the ballot should be shortened, but difficulty begins as soon as it is asked how shall it be shortened. It will then be found that the short ballot movement raises questions which envolve the entire organization of public authority. All countries in which popular government has been established have the short ballot. We started with the short ballot, but we have gradually converted it into the present long ballot—a labyrinth in which only professional politicians can find their way. What is the cause of this great difference in the course of political development? May it not be due to the influence upon American politics of the doctrine of the separation of the powers. In countries having the short ballot the executive and legislative branches are invariably connected; with us they are separated. It may be that derangement of function due to this separation has been the cause of the process of change that has produced the long ballot. This is a subject well suited to the application of the inductive method now employed by political science. The origin and the spread of the doctrine of the separation of the powers lie in a well-lighted area of history. Data seem to be abundant by which we can reach an authoritative conclusion whether the separation of the powers is compatible with democratic government. If the monster ballot belongs to a genetic series of which the separation of the powers is the beginning, then the cure evidently lies in the removal of this fundamental defect of the American constitutional system.

CANADIAN NATIONALISM AND THE IMPERIAL TIE

BY G. M. WRONG

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When I speak of Canadian nationalism, I mean that, for better or worse, we have on this continent, not one nation of British origin, but two nations, the one as completely resolved to go its own way as the other. Canada, like the United States, a great federation, has now nearly 8,000,000 people, about three times as many as had the United States when it became independent. Moving on its own lines, Canada is rapidly completing the apparatus of national life. It is taking steps to build a navy to be under its own control. It negotiates its own commercial treaties. Questions between Canada and other countries are settled now, not from London, but from Ottawa. The British ambassador to the United States, who is with us to-day, has a more difficult task, in some respects, than any other diplomat at Washington for he serves two nations, and not merely one. It is our British habit to leave things in theory, quite different from what they are in fact. In theory the king still rules; in fact he has no political power and the prime minister, a person unknown to the law, rules; in theory Canada is a colony; in fact it is an independent nation.

For a country in the new world, Canada has a tolerably long history. Jacques Cartier sailed up the St. Lawrence nearly 400 years ago, and some of the place-names still in use were given by him at that time. All Canada looks back for its beginningsto the early days of French rule. The story of Cartier and of Champlain is told in history text-books from the Atlantic to the Pacific. It is a singular paradox of history that an English-speaking community should claim as their national heritage the traditions of the French who founded Canada rather than those of their own race who settled Virginia and Massachusetts. But so it is, and the fact shows how composite are the elements in the Canada of today. French and English, Catholic and Protestant, have united here to form a nation, on lines quite different from any to be found elsewhere. The Parliament

at Ottawa is bi-lingual. A member speaking in English may be answered by a fellow member who addresses the house in French, Debates and public documents are printed in both languages.

The French element in Canada has remained Catholic, almost to a man, and probably two-fifths of the Canadian people are adherents of that faith. They have fought strenuously to keep up the teaching of religion in their schools and now, in sharp contrast with what is found in the United States, some of the Canadian provinces have state-supported schools, teaching definite religious dogmas. This state recognition of differences in religion has, without doubt, produced a great effect on Canadian life. Religious bodies, as such, occupy a place in Canada markedly different from what they have in the United States. Canadian society holds strenuously to certain old-fashioned views. The Roman Catholic church has set its face against easy divorce. Though Nova Scotia and British Columbia have, I believe, reserved some powers to grant divorce, in other parts of Canada a divorce can be secured only by special act of the federal parliament. So old-fashioned are parts of Canada that, to this day, the lectures in philosophy in Laval University are given in the Latin tongue.

Perhaps nothing has aided more to keep up old traditions in Canada than the continuance of the monarchical idea. To the average citizen of the United States, a king is a remote person, the embodiment possibly of senseless tyranny, but belonging, at any rate, completely to another world. A land that has a king seems strange indeed. No doubt the use of his name is little more than a convention in the work of government, but it preserves an old mode of thought. In the law courts the king brings various actions against other persons, as sometimes other persons bring actions against him. The initials E. R., *Edwardus Rex*, are to be seen exposed in many places. It counts for something that Canada has today a King Edward, as England had more than six hundred years ago, when that mighty *Malleus Scotorum* not only smote Wallace but also began to rear the fabric of law under which we live to this day. It gives this new society, in this new world, a certain old-world flavor that *Edwardus Rex* is still on the throne. The link with the past is unbroken. The contrast in outlook with that of a republic is sharp and important.

Other differences strike the observer. Canadian newspapers, in the east, at least, are different from those of the United States. In contrasting them one sees that the United States represents in some

ways, a more advanced society. It would not be profitable for Canadian newspapers to discuss the questions of art and letters that I find the Boston *Transcript*, for instance, taking up. Canadian society has not the links with continental Europe that Canada's more affluent neighbor has developed, and that furnish many topics to the press. Another difference is that Canadian newspapers are less personal in their discussion of public men. Social customs vary in the two countries. A colleague of mine, who lived for a time in Washington, has not yet recovered from the amazement of his hostess when he ventured to make an evening call in Toronto. There is even a manner of speech peculiar to Canada, and I have not a word to say in its praise.

Canadian nationalism is perhaps best illustrated by the type of federal institutions which it has developed. It is a commonplace of the constitutional histories that while, in the United States, the non-delegated powers remain with the individual states, in Canada they remain with the central government. Thus, in Canada, the theory is that the people form one whole, with one supreme parliament, on the model of that of the United Kingdom. Certain powers have been delegated to subordinate legislatures, but ultimate political power is with the people as a whole. I suppose that, in fact, if not in theory, this has been the situation in the United States, since the civil war. But in the United States the individual state is still in some ways a sovereign commonwealth. It has the power of life and death over its citizens, it has its own distinct law courts, with judges of its own creation. In Canada the federal government alone has the power of life and death; it alone appoints judges; one set of courts administers both federal and provincial law. We do not speak in Canada of members from Ontario, or Quebec, or Nova Scotia, as, in the Congress of the United States, members from Missouri or Iowa are referred to. We speak instead of the member for Toronto or Winnipeg or Vancouver, his own constituency; they all are Canadians and it does not matter what province they come from. We have two great national political parties, definitely organized under permanent leaders. To us the two parties in the United States without recognized national leaders, except just on the eve of an election, seem headless and we find it hard to understand the phrases "Leader of the Majority," and "Leader of the Minority." Our parties are for or against the government, under rather strict party discipline. We have, in a word, the English system of party, grafted on to federal institutions.

Instead of a term of two years as in the United States the term of a Canadian parliament is five years. But the House of Commons can force an election at any time, by simply refusing to support the cabinet in power. We never have any antagonism in Canada between the legislature and the executive power, such, as rumor says, sometimes exists in the United States, and the reason is simple enough. The legislative power turns out of office any executive that it does not like and installs one to its own mind. One of the most difficult things for a Canadian, as well for an Englishman, to understand in the Unites States is how a government can work that is not, by the presence of cabinet ministers in the legislative body, in close touch with the law-making and money-granting power from day to day. That it does work we, of course, see.

Another thing that strikes us in the almost predominant, certainly the co-equal, power of the second chamber in the United States. I do not know what will be the case in Great Britain soon, but in Canada we have practically no second chamber. As I say this I am aware that Canadian senators would rise in indignant protest against such a statement. There is a Canadian Senate. It is a useful body, which does much hard work on the details of Acts of Parliament. But it is not elected and thus represents no one; it has no real hold on the people; and it has never resisted the will of the House of Commons on any important question. It is shadowy, indeed, compared with that masterful body which sits at Washington.

If Canada has a national type different from that of the United States it is different also from Great Britain. In some respects, a Canadian is more at home in the United States than in England. He finds the hereditary rank, the stratified society, the sharp distinction of classes in Great Britain rather oppressive. An attempt to set up in Canada such conditions was indeed made, just after the American Revolution. Canada was to have a hereditary House of Lords, but conditions made the proposal absurd and, for good or evil, Canada has today as complete a democracy as has any republic.

If I have said enough to show that there is such a thing as Canadian nationalism it is time to discuss the imperial tie. Why does Canada remain linked with Great Britain? Was it not Mr. Roosevelt who spoke pityingly of the Canadian people as half-slave, half-free? Canada retains the tie with Great Britain because there has never been any reason why she should sever it. There was a reason why the United States should break the tie and broken it was. Canada

could now break it without a struggle. The Canadian parliament has long been a body practically supreme. If it chose to make a declaration of independence, probably not a blow would be struck to prevent it, and few of us would be conscious that any real change had taken place. Yet the tie with Great Britian would end. No doubt there would be a good many things for the lawyers to adjust, but the average man would hardly feel a jar.

But the tie will not be broken. It is natural and even necessary to Canada. The world has seen three types of relation between a mother country and her offspring. The Greeks went out, founded new colonies, and copied the institutions of the mother land. But, from the first, these colonies were completely independent. As they prospered, they were apt to assume airs of superiority, and to take rather a patronising interest in the home land. The tie was merely sentimental; one state exercised no sort of control over the other.

The second type of relation appears after the discovery of America. Then Europe sought to exploit America for its own benefit. Colonies were to be sources of profit. That this kind of tie was unnatural and mischievous is perhaps proved best by the fact that it has not endured. There was a time when the whole of the two continents of North and South America were in one way or other "possessions" of European powers. All this has ended. Except the island of Newfoundland, Canada is the only land in North America that retains any tie with a European state, and assuredly Canada is not a "possession" of Great Britain, but of its own people. Why this change? Well, Canada was almost invited to go too. Lord Beaconsfield, the great conservative leader in Britain, is on record as having desired to be rid of Canada, and some liberals, too, once thought that they had enough for the energies of the British people in dealing with great home questions. They wished to destroy class privilege, to improve the condition of the masses, to end the misrule of Ireland. They feared the complications with other peoples that colonies might bring. We have been told how, during the American Civil War, it was suggested that if the North would let the South go, it might have Canada as compensation. The bargain was not made, it could not be made, as you well know, for many reasons! One of these is that it then was, as it still is, for Canada to settle her own destiny.

Now a new school of thought has made itself heard and we have the third type of relation. The old colonial theory of great colonies, subordinate to the mother land, is dead, dead beyond hope of resur-

rection, and something nobler has taken its place. This is its chief thought: why should not peoples of the same origin, with similar modes of political thought, with institutions closely related, remain linked together for the benefit of all? They would certainly never war on each other. Peaceful intercourse would be their ideal, they could aid in promoting each other's trade, and their weight in the councils of the world would be a unit. This is the present theory of the British empire—a league of free states acting together for their common interests.

Let me note some of the causes which preserve this union.

(1) Natural growth is better than revolution. Every state tries to avoid revolution, which comes always as an evil, sometimes, however, an evil less than the greater one which revolution throws off. Let any one look at the bitterness of party strife in France to-day and then ask himself whether that land would not be happier if liberty had been gained without revolution. It has been so gained in Canada, which has, in consequence, preserved unbroken, as her own, the whole range of the traditions of British history.

(2) Partnership between Canada and Great Britain is in the interests of both. The time has come when Great Britain needs Canada, quite as much as Canada needs Great Britain. The consolidation of power in modern states is a startling fact. By such consolidation, it has happened that Germany, for instance, has one and a half times as many people as Great Britain, and might be able to overwhelm her by the mere weight of numbers. The balance is redressed when we add Canada's growing population and resources to those of Great Britain.

On the other hand, Canada needs Great Britain. Perhaps it is not as easy to-day for a state with a small population to live as it was a century ago. Facility of communication has made the world one. We are all neighbors to each other; all of us know what the others are doing. We watch each other's plans. Strength is centralized in a few great powers. A state of 8,000,000 or 9,000,000 is but a small affair in our world of political giants, and great armaments make such a state, standing alone, practically helpless. Ninety years ago the United States had some 9,000,000 poeple, very little more than Canada has now. At that time, New York was a city about half the size of the Toronto of to-day. Yet this small people ventured to assert the Monroe Doctrine, to warn off Europe from America. How the world would laugh if Canada should now venture

to make any declaration of such world-wide import! The thought at once occurs that such a step would be impossible, for the United States has already taken the leading place in America. Quite true; but this suggests something else. When the United States began, it had, as it still has, no powerful neighbor, and could go its own way light-heartedly. Canada has a powerful neighbour. Is it not wise for her to retain a tie that gives her more weight in time of difficulty?

If Canada and Great Britain can be useful to each other in face of the outside world they help each other too in their internal relations. John Bull is a wealthy old gentleman with plenty of money to invest. Canada is a vigorous young man, in business for himself, but cramped by lack of capital. What more natural than that one should supply the other? The one thing needful is confidence and this the political tie helps. Owing to this confidence, Canada is able to secure vast sums of money at a very low rate of interest. She has a preferred position in the money market. It is not easy to realize the growth of the financial relations between her and Great Britain in recent years. In 1908, out of total bond issues of more than $200,000,000, Canada sold 84 per cent in Great Britain. The government and the railways of Canada now owe more than $800,000,000 in Great Britain—nearly the whole of their bonded debt, and vast sums in municipal and other bonds are also to be added to these figures. It is needless to say that the British investor watches events in Canada closely. It is equally true that in every part of Canada those standards of political and commercial integrity must be followed which will comment themselves to the people of Britain. These have played the game of politics and finance a very long time and expect Canada to confirm to their best traditions. That all this exerts a steadying influence in a new country, who can doubt?

(3) The political tie between Canada and Great Britain leads to the working of educative influences between the two countries. British newspapers are now sent to Canada at rates actually lower than those charged in Britain itself. The result is that, in recent years, thousands of them have begun to circulate in Canada. At this moment the people in Canada are watching the political struggle in Britain with close attention. The chief figures in the contest are all familiar to them. The British statesman of to-day is highly trained in his special line; the best life of Britain is in her politics, a fact not wholly true of Canada; and I count it a thing of value that the Canadian should get his politcal education, not only from his

own leaders, but also from those of Britain. Its effect is real. The arguments for free trade used in Britain have produced a distinct effect in Canada in helping to check high protection. The result is the education of the Canadian in the problems of a mighty empire. It cannot but be broadening, elevating, to a people chiefly inland, and in special danger of being provincial. The interest in these things is keen because the tie is real. Break the tie and the interest flags.

(4) This brings me to one other reason for the tie. It will lead, I hope, to Canada's bearing her share of Britain's burdens. We are commercial people in this western world, and are apt to measure greatness in terms of dollars and cents. I confess to growing a little weary, at times, of hearing how many bushels of grain, of how many millions of dollars in value, the Canadian west is likely to produce. I hope the tie with Britain will help us to add to the outlook in Canada some nobler ideals of world-wide service. Britain controls today the destinies of some 350,000,000 of alien people, unable as yet to govern-themselves, and the easy victims of rapine and injustice, unless a strong arm guards them. She is giving them a rule that has its faults, no doubt, but such, I make bold to affirm, as no conquering state ever before gave to a dependent people. I hope that the tie with Britian may lead Canada to share this burden, and that we shall before long have highly trained young Canadians employed in the great task of governing India. I know not what indiscretion I may be guilty of when I say that I have always been glad that the United States assumed the task of governing an oriental people. To me it seems the highest type of missionary work that a great free state should try to educate another people in its own modes of thought. I am proud to think that my own country may some day have its share in such tasks.

To-day as one surveys the relations between Canada and Great Britain it is evident that some things have still to be adjusted. Canada must bear a heavier share in the work of defending the British Empire than she has yet borne. Even so, however, the cost will be less than it would be, if Canada stood alone. Canada's neighbor, the United States, has found that, to meet possible dangers from the east and from the west, it must make a vast outlay, and Canada, with both an Atlantic and a Pacific seaboard, must have similar protection. She must have it too, not by ignobly hiding behind the skirts of a powerful neighbor, but by bearing her share in a unified

system of British defence. It is not to the credit of our civilization that all the great nations stand today with the hand on the hilt of the sword. A change for the better may come sooner than we now expect. Meanwhile Canada has to build a navy. In its beginnings the value of the imperial tie is apparent at once. A naval college will be established on British lines. The first instructors will, no doubt, be officers from the British navy and thus the traditions of the older fleet will pass naturally to its offshoot in Canada.

For reasons such as these Canada values the imperial tie. No doubt to some it seems to involve inferior status. Many will persist in thinking of Canada as a subordinate colony, and this a high-spirited young nation resents. When we think of the strides it is taking, we see how ludicrous is the notion that such a people can be absorbed by any other, or remain subordinate to any other state. Canada is today receiving immigrants at a rate unparalleled in the history of the world; at the same ratio to population 3,500,000 people would land in the United States in a single year. The hard northern climate leaves no room for the loafer. Men must work or freeze. Energy, self-reliance, pride, grow amid such conditions, and they need careful handling. The British and the Canadian people are not likely to agree on all great questions. The public opinion of the two countries has differed and tact is necessary. I believe the causes of possible difference are now few and I do not doubt the permanence of the tie that links these peoples together. My hope for the future is that a Britain, brought daily into closer touch with the vital needs of the masses of her people, and a Canada, sobered and chastened by a grave sense of responsibility as member of a world-wide empire, may work together in pursuit of a high Christian civilization. It may be a dream that a league of states, Great Britain, Canada, Australia, New Zealand and South Africa, girdling the world, can hold together for common and high aims, but it is surely a noble dream to cherish.

TENDENCIES IN BRITISH FOREIGN POLICY SINCE DISRAELI[1]

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In April, 1880, the conservative ministry which had held office for six years resigned. Of that ministry Benjamin Disraeli, Lord Beaconfield, had been the dominating spirit as well as the official head. But at the end Disraeli's government did not leave a clean slate. Indeed for the next thirty years successive British cabinets were compelled to deal with problems and policies unwillingly bequeathed to them by that ardent and imperious mind. What were then, in 1880, the major problems of foreign and colonial policy left unsolved? Secondly, have any of them been solved? And are there now new questions? So, may appear to us who sit and watch some characteristics or tendencies of recent British foreign policy.

But this is a large order for a short twenty minutes. The additional difficulty is lack of essential material. When at last the day of resurrection comes for documents now securely enclosed in archives, when the natural reticence of men who have made history has ended, when in turn the student has gained perspective, the time may come really to know and to judge more intelligently of the matters before us. Indeed, the dubious yet exciting character of this adventure is only emphasized by Mr. Dooley's advice on the writing of history:

> Don't make any foolish bets on Histhry . . . . Th' further ye get away fr'm anny peeryod th' better ye can write about it. Ye are not subjict to interruptions by people that were there.

But, whatever the result, on such an historical holiday it may be pleasant even to run risks.

So, first, we find three regional problems, in one sense limited by geography, in another sense extended by human policies and geo-

[1] A paper prepared for the joint session of the American Historical and Political Associations at the Waldorf-Astoria on December 29, 1909, in celebration of the Centennial of Mr. Gladstone's birth.

graphic connections to the realm of world politics. Thus there was, in 1880, the Egyptian question, in which African, Asiatic, and European interests were involved. Here itching palms of anxious foreign bondholders pressed on the shoulders of statesmen. On high in Egypt there had been riot of financial orgy, while at the bottom still toiled the *fellah*, the laborer, who did the work and was not paid. Meanwhile many waited, expectantly hoping that racial and religious fanaticism, the intrigues of military cliques, and international rivalry might shortly combine to hide naked yet entangled facts.

Thirty years ago this special British interest in the Egyptian question had been significantly shown in at least three instances. In 1875, the British government, partly through the inspiration of Disraeli, purchased from the Khedive a large block of shares in the Suez Canal, the "spinal cord" of the empire.[2] Soon the tangle of Egyptian finance grew tighter. And in 1879 Great Britain shared in forcing the abdication of the Khedive Ismail. Later a French and a British controller-general of Egyptian finance were appointed; the Egyptian authorities, by the decree of November 15, 1879, could not remove *either* without the consent of his home government.[3] Despite these facts, Lord Cromer has laid the "main responsibility for the British occupation" of Egypt on the incoming liberal ministry.[4] But these three facts, emerging from a mass of supporting material, demonstrate to me the essential truth of Mr. Gladstone's contention in 1882 that British "political control" in Egypt, by reason of intervention before 1880, had become, if not a reality, certainly a permanent matter of practical politics.[5] The fact that foreign control in Egypt was then shared by France does not affect the question of British cabinet responsibility. Here then was an inherited problem, and one destined to rapid growth.

But the history of the Egyptian question is well known. Here we need only a summary. In 1881, an Egyptian military revolt, affected by nationalistic ideas, led to the occupation of Egypt by British troops acting in the name of the Khedive. Anglo-French coöperation slowly changed to rivalry. Then followed the patient yet varying development of British administrative policies till Egypt was practi-

[2] Parliamentary Papers (hereafter to be cited as P. P.). Cd. 1391. Egypt. No. 1, (1876) p. 7. 177,642 shares were purchased.

[3] P. P. Cd. 2549. Egypt No. 1 (1880), p. 138.

[4] Cromer: *Modern Eygpt.* I. p. 161.

[5] Hansard. 3d Series, vol. 272, pp. 2094-2103 (July 27, 1882).

cally a British protectorate. The recovery of the Sudan, in 1898, was possibly stimulated by Italian reverses in Abyssinia and by the dread of a French flanking advance from the southwest.[6] In Abyssinia there had been also a Russian mission.[7] At all events, Englishmen felt that they had at last a memorial to Gordon. But, whatever opinion one may hold as to British policy on this or that occasion, most men will now agree as to the present success of British control in Egypt. From an imperial as well as a local point of view it is essential. Here, then, is a tangled matter, which, from the British point of view, has at last reached a fortunate stage.

Meanwhile, at the other end of Africa, a second regional problem was developing. In the Transvaal sullen farmers, perplexed and militant, were faced by policies which they did not understand. Nor did many men then understand the farmers. The annexation of the Transvaal in 1877, and the natural dissatisfaction of the Boers, had, in 1880, led to war.[8] This difficult problem was soon further aggravated by British defeats. Whether wisely or no, Mr. Gladstone's government, faced by a problem which it had not created, decided to reverse the Disraelian policy and in the face of defeat bravely to offer peace. The subsequent arrangements, while asserting a doctrine of "permanent interest" by the British, did not continue the British claim to regulate the government of the Transvaal.[9] Nearly twenty years passed, and then, on both sides, the cumulative effect of past memories and present interests again resulted in war. But we now see the final and costly British victory both crowned and hidden by a solution which reflects honor on present compatriots who were so lately antagonists. The South African constitution, interesting to the historian and important to the political scientist, is to be the subject of a later paper at this session. I congratulate Mr. Fisher on his subject. Today, however, we can remember that in May, 1881, Mr. Gladstone declared that South African confederation was then the "pole-star" of the action of his government.[10] And thus we have

[6] *Annual Register*, 1896, pp. 371-72. Cf. Rose: *The Development of the European Nations*. II. pp. 224, 227.

[7] *Annual Register*, 1897, p. 378.

[8] British and Foreign State Papers (hereafter to be cited as S. P.), vol. 68, p. 140.

[9] Convention of August 3, 1881. S. P. vol. 72, p. 900. Convention of February 27, 1884. S. P. vol. 75, p. 5.

[10] Morley: *Gladstone*. III p. 23.

a second example of a tangled problem, bequeathed in 1880, but which in 1910, after varied policies, is likely to secure a temperate solution.

Now, thirdly, there is Afghanistan, an Asiatic land of mountain ranges embattled between England and Russia, the two transcontinental Eurasian empires. In 1875, the problem here had developed through the determination of the British government to force an exhibition of British interests in Afghanistan.[11] This was in answer to real threats of increased Russian influence. In 1879, however, the result again was war. British victory, after dark days, then stirred the desire to expand, in particular to partition Afghanistan and to place the southwest under some form of British control. The difficult question, therefore, was whether gallantly to retire or with reckless optimism to grab for what the future, in wiser fashion, might still essentially secure. The royal speech of January, 1881, answered the question, announcing the evacuation, by the British, of Kandahar, the capital of southwestern Afghanistan.[12] That tumultuous country was to be left practically intact under a king who knew how to rule. Here, then, was a prompt and flat reversal of the policy urged by representatives of the previous British government. And now there have been nearly thirty years of peace with Afghanistan. British influence in that region has, meanwhile, created a relatively effective sphere of influence, if not a protectorate. This condition, which has slowly yet naturally developed from the decision announced in 1881, has been further demonstrated, or at least temporarily endorsed, by the recent Anglo-Russian agreement. And today the Indian border is comparatively and fortunately quiet, while unrest troubles Calcutta, Lahore or Puna. The Central Asian question therefore, although probably not solved, is at least more quiescent than in Disraeli's day.

But are these three regional problems typical? Must we not also turn to other aspects of recent British foreign policy, to another group of questions, wider in range, yet more direct, perhaps more menacing in their possibilities? At least we can ask a few questions concerning the development during the last thirty years of Anglo-French, Anglo-Russian, and Anglo-German relations. Here are interests which from time to time suddenly focus in a given region or

[11] Salisbury to Gov.-Gen. of India. Jan. 22, 1875. P. P. Cd. 2190. Afghanistan (1878-79) p. 128.

[12] Hansard: 3d Series vol. 252, p. 4.

because of a particular incident. But continuity and range are also here. Such matters utilize geography and illuminate or give character to political detail. The weary traditions of diplomacy and the long forces of economics both have their part.

Anglo-French relations, in the first place, might claim an amicable start, for in 1890 both powers had apparently a fairly common policy in Egypt. Tunis was shortly to be occupied by France, probably with an earlier intimation of British acquiescence.[13] But the results of Napoleon's Egyptian expedition were prophetic; and amity in Egypt was to prove a dream. The rivalries of the two powers had no rest. On the coast of Newfoundland, in West Africa, in the valley of the Nile, even on the boundaries of Siam, there were to be anxious questions. Meanwhile the tantalizing advance of the Franco-Russian alliance served finally to underscore a hostility reminiscent of the 18th century. Indeed, during the last Boer war the clamor of the French public, resentful at late rebuffs, possibly also the elusive thoughts of the French government, suggested another struggle with England, the modern Carthage.[14] In the face of such hostility, the statesmen of both countries nevertheless made progress toward a peaceful understanding. In 1899, an agreement was reached as to African boundaries,[15] and in 1904 as to Newfoundland fisheries.[16] Under these auspices, the Anglo-French *entente cordiale* made its way into a politely interested society.[17] The opportunities given by events in Morocco, and by the Algesiras conference of 1906, were well utilized.[18] It is true, this amicable situation may not last many years. But now we see, on the part of England, a policy which does not irritate her neighbor, on the part of France a willingness, as far as England is concerned, to live in the world as it is. On both sides there is a wary yet optimistic inclination to let by-gones be by-gones. Is not this a gain?

Anglo-Russian relations have in turn a somewhat similar trend. But here events more often crowd closer to the edge of war, possibly because of a more natural recent inheritance of animosity. These

[13] Fitzmaurice: *Granville*, II. p. 234.

[14] Cf. *Daily Telegraph*, Oct. 28, 1908 (Interview with the kaiser).

[15] March 21, 1899, S. P. vol. 91, p. 55.

[16] Dec. 8, 1904, P. P. Cd. 2383. Treaty Series, No. 5. (1905).

[17] April 8, 1904, P. P. Cd, 2384 and 2385. Treaty Series, Nos. 6 and 7. (1905).

[18] April 7, 1906. P.P. Cd. 3302. Treaty Series, No. 4 (1907).

relations furthermore have, in large part, concentrated in Asia; and this concentration, if such a word can be used with reference to a continent, has thus tended to clarify and intensify the issue. In the first place, Disraeli's government was, in large part, responsible for the checks endured by Russia in 1878, after she had won military and diplomatic victories from Turkey. Moreover, the natural regrets of Russia, after the Congress of Berlin, had bred schemes of revenge. Here, then, the liberal ministry was undoubtedly a legatee. The forces set loose by this opposition of Anglo-Russian interests were already clearly shown in the Afghan situation.[19] The lively degree of Russian hostility was futher exhibited in 1885 by her occupation of Penjdeh in Afghan territory. And this event was finely timed to follow the news of Gordon's death at Khartum in January, and the consequent loss of the Sudan.[20] We can now recall how 18th century diplomacy resorted to schemes of joint partition to preserve the balance of power and to satisfy political ambitions. Today, although the map has grown, the principle of compensation and indemnification still lives, however unwillingly it may be occasionally agreed to by one or the other of the interested parties. Although British continuance in Egypt might not justify Russian advance in Central Asia, it could, however, at the very least, be utilized if not proclaimed as an excuse. At all events, the British government did not then regard, nor has it since regarded the actual Russian military and railway advance in Asia as reason for an ultimatum or for war. The critics of British policy have with some reason declared it to be perversely blind as to an ultimate hope by Russia to invade India. But the successful work, during the last twenty odd years, of various Asiatic boundry commissions has partially silenced these critics. Indeed, the whole situation was, at least for the time, radically altered by the failure of Japanese negotiations with Russia in 1901, and the formation in the next year of the Anglo-Japanese alliance, which was three years later renewed and extended.[21] The larger problem, however, still remains. We know that a check to Russian plans in one Asiatic field has often led to renewed activity in other directions. After Russian defeats in Manchuria, therefore, the world eagerly learned of an Anglo-Russian agreement. This document of 1907

[19] Cf. Rose. II, ch. II and Appendices II and III.

[20] Cf. Rose. II, p. 131. Busch: *Bismark*, II. p. 376.

[21] Jan. 30, 1902, P. P. Cd. 914, Treaty Series, No. 3. (1902). Aug. 12, 1905, P. P. Cd. 2735. Treaty Series No. 25. (1905).

deals with the situation in Persia, Afghanistan and Tibet.[22] It is true that this engagement ratifies rather than alters the actual situation. Nevertheless, though not a bargain for serious future coöperation, it is an amicable recognition of respective interests. Of course, the interpretation of such an agreement may, at any stage, depend on force, and on the development of future policies. The general gain, however, over the Anglo-Russian situation which existed in 1880 is now both apparent and important. We may understand its fuller bearing in connection with our last topic, Anglo-German relations.

In 1880 Germany needed peace; and both England and Germany, as joint authors of the Treaty of Berlin, were of necessity charged with the enforcement of that treaty. A common policy was therefore apparently not impossible, especially as both powers had so recently incurred Russian hostility.[23] But Bismark hated parliamentary government; and he disliked and distrusted Mr. Gladstone;[24] in 1883 he declared British foreign policy had for three years "been an unbroken series of blunders."[25] Indeed, as early as 1884 a two-fold divergence between the two nations became evident. German colonial ambitions had at first met with cynical indifference by the British public; but later both British government and people showed an inefficient opposition toward German expansion.[26] Secondly, the emphatic testimony summarized by the report of the royal commission on the depression of British trade revealed the pregnant possibilities of economic competition.[27] On these two lines the main issues have since advanced. Nevertheless, until 1896, the year of the kaiser's telegram to President Kruger, the essentially peaceful policies of both England and Germany continued to postpone any significant changes. The general European situation, however, had changed. For nearly twenty years England in her "splendid isolation" had been apparently indifferent to the progress of alignment

[22] Aug. 31, 1907, P. P. Cd. 3750. Russia, No. 1 (1907).

[23] Fitzmaurice: *Granville*, II. p. 212, 225. *Bismark, the Man and the Statesman*, II, p. 240. Busch: Bismark. II. p. 396.

[24] Fitzmaurice: II. pp. 202, 208, 225, 233.

[25] Busch: *Bismark*, II, p. 344.

[26] P. P. Cd. 4265. South Africa, 1884-85. Derby to Robinson, Dec. 4, 1884. Fitzmaurice: *Granville*, II. ch. X.

[27] P. P., Cd. 4715. Second report of the royal commission on the depression of trade and industry, March 3, 1886, pp. 21, 43-44, 48-50, 54, 57, 64, 67-8, 119-22, 124-5, 128, 130, 140, 193, 221, 265, 283.

which had ranged, Germany, Austria and Italy on the one hand, and on the other, France and Russia. Here, surely, was an opportunity which Cardinal Wolsey would have utilized. But until recently British policies have shown no clear intention with regard to Germany. Thus there was in the first place an opportunity at the start for combination, from which the British government refrained. However, both powers later actually joined policies on various occasions, but not always to the ultimate advantage of Great Britian. Thus, in 1885, African affairs were settled by joint action;[28] in 1890 a bargain was struck as to Zanzibar and Heligoland,[29] and some years later the Samoan question was settled.[30] Agreements in 1900 as to China,[31] and in 1902 with reference to Venezuelan affairs, do not exhaust the list. Lastly the occasion came more than once for appreciation, on the part of the British, that German policies and behavior were at times distinctly hostile. To-day we can recall those lines of opposition and competition already shown twenty-five years ago. We must also remember the geographic and military significance for Germany of the Franco-Russian alliance. Thus can we speculate over the possibilities of the Anglo-French *entente*.

Furthermore, the Anglo-Russian agreement has recognized Russia's sphere of influence in Persia which is near the field of ambitious German development by means of the Bagdad railway. In the case of France, English agreement has already helped to raise the issue of German ventures in Morocco. May it not be possible that the Anglo-Russian agreement will affect German interests in Asia Minor and the Euphrates valley? Thus after nearly thirty years of Anglo-German relations no clear or continuous line of official action is evident. But while we are forced only occasionally to record expressions of official opposition, we must remember that governments cannot permanently control the economic ambitions or necessities of nations.

Here, then, as we look back we may see, from the point of view of party policies, a curious antithesis. After all, Disraeli had aimed at making British interests dominant in Egypt, South Africa and Afghanistan, but these aims, at one time or another, were threatened

[28] Berlin conference for African Affairs, Feb. 26, 1885, S. P., vol. 76, p. 4. Also pp. 58, 66 and 772.

[29] July 1, 1890, S. P., vol. 82, p. 35.

[30] Dec. 2, 1899, S. P., vol. 91, p. 75.

[31] Oct. 16, 1900, P. P., Cd. 365. China, No. 5. (1900).

by Gladstonian policies. Nevertheless, to-day England is happily director, if not master, in those regions. Yet is this entirely Disraeli's posthumous victory? Was Great Britian, was the empire really ready, in 1880, for Disraeli's programme? This liberal ministry, which was empowered in 1880, must have been an uneasy body. Individual members with difficulty restrained a tendency toward resignation, which threatened at times to become a habit.[32] But Mr. Gladstone always had a keen sense of relative values. Was it not, therefore, wise for him to try to hold his cabinet together in the face of divergent views, in order, at least, to attempt the realization of large policies? And now, looking both to the past and to the future, we can appreciate that opposition to aggressive policies, while it may not be popular, is nevertheless essential to free institutions. The ministry of 1880, whether consciously or not, was the brake on forces and tendencies which, if they were to be justly and finally successful, required at that time new guidance, a check, if not a halt. So to-day in any estimate of British success in these matters Gladstonian ideals must have a fair share.

But even larger questions remain. Irrespective of party policies or party leaders, can we not distinguish certain characteristics or tendencies of recent British policy? The facts here presented have been scanty; but on the basis not merely of what we have here recalled, but also of what we know, I judge that we can distinguish at least four tendencies. Since 1880, British foreign policy has been aggressive, possibly belligerent. It has stimulated the addition of large areas to the Empire, and has held in check by dramatic, if not always diplomatic means, both republican and imperial rivals. Yet secondly, it has been at times clearly a peaceful policy. Great struggles with European and American powers have been avoided. On occasion, a British government has preserved peace at the price of popularity. So the patient years show also a record of achievement in restraint. Thirdly, the cause of peace has been assisted by the process of elimination of disputes. This tendency has alleviated large, scattered yet recurrent, animosities. Thus many matters formerly pregnant with

[32] Robertson: *Bright.* p. 529. Childers: *Childers*, II. p. 222. Reid: *Forster*, p. 564. Argyle: *Autobiography* II, pp. 352, 377. Fitzmaurice: *Granville*, II., pp. 321-22, 380, 404, 421-22, Mallet: *Northbrook*, p. 194. Morley: *Gladstone*, III, pp. 65-66, 83-86, 174-75, 185-89, 200.

war have been settled with satisfaction to both sides.[33] This process of elimination may continue; at least its present success has been marked. And as a result we have seen rivals become friends. But elimination may after all be limited in scope. Alliance and combination can extend further; and in the last few years British isolation has ended. Fortunately, therefore, we have the policy of the *ententes*. Possibly under the inspiration of England, which already had an Asiatic alliance, a regrouping of the European powers has taken place. At least we can now realize that "masterly inactivity" and

[33] A brief selection from over 130 illustrations of this policy of elimination will underscore the importance of this tendency and reveal the wide range of British coöperation in endeavoring to settle dispute by treaty rather than by war. Agreements previously referred in this paper are here omitted.

April-June. 1885. Anglo-German arrangement concerning Spheres of Action: Africa (coast of Guinea; Cameroons; Victoria, Ambas Bay; Santa Lucia Bay; Coast between Natal and Delagoa Bay; Customs, etc.) S. P., vol. 76, p. 772.

10 September, 1885. Anglo-Russian Protocol respecting the Afghan Frontier. S. P., vol. 77, p. 303.

6 April, 1886. Anglo-German Declaration for the Demarcation of Spheres of Influence in the Western Pacific. S. P., vol. 77, p. 42.

27 July-2 August, 1886. Agreement with Germany respecting Spheres of Action in the Gulf of Guinea. S. P., vol. 77, p. 1049.

29 October-1 November, 1886. Agreement with Germany respecting Zanzibar and Spheres of Influence in East Africa. S. P., vol. 77, p. 1130.

16 November, 1886. Anglo-French Convention concerning the New Hebrides. S. P., vol. 78, p. 545.

[2, 9] February, 1888. Anglo-French Agreement respecting the Somali Coast. S. P., vol. 83, p. 672.

[12, 20] June, 1888. Exchange of Notes with Russia relative to the Boundary of Afghanistan: Heri-Rud and Oxus. S. P., vol. 78, p. 388.

14 June, 1889. Final Act of the Samoan Conference of Berlin. Concluded with Germany and the United States. S. P., vol. 81, p. 1058.

11 May, 1891. Treaty with Portugal and Exchange of Notes respecting Spheres of Influence in Africa. S. P., vol. 83, pp. 27, 890.

20 June, 1891. Convention with the Netherlands respecting Boundaries in Borneo. S. P., vol. 83, p. 41.

29 February, 1892. Treaty with the United States providing for Arbitration of the Behring Sea Seal Fisheries Dispute. S. P., vol. 84, p. 48.

22 July, 1892 Boundary Convention with the United States respecting Alaska and Pasquamoddy Bay. S. P., vol. 84, p. 70.

8 July, 1893. Treaty with Mexico respecting the Boundary of British Honduras. S. P., vol. 85, p. 58.

25 November, 1893. Protocol and Agreement with France respecting the Intermediary Zone in Upper Mekong. S. P., vol., 85, pp. 35, 36.

"splendid isolation" have been, after all, the two sides to the same coin. And that coin apparently is now no longer current in Downing Street.

But such diversity of tendencies has, perhaps, encouraged some writers to call British policy opportunist. The present question is whether, in view of the particular international rivalry, of which to-day all men speak, this policy of elimination and of combination may not also be intentionally opportune. Is England in diplomatic affairs arranging a new code of signals and clearing the decks?

Yet all of us are thinking not only of such dread possibilities, or of the great Englishman whose birth we gladly celebrate today, but

1 March, 1894. Convention with China respecting Burmah and Tibet. S. P., vol. 87 p. 1311.

5 May, 1894. Anglo-Italian Protocol for the Demarcation of Spheres of Influence in Eastern Africa. S. P., Vol. 86, p. 55.

11 March, 1895. Agreement with Russia respecting Spheres of Influence in the Pamirs. S. P., Vol. 87., p. 15.

16 June, 1895. Convention with the Netherlands respecting Boundaries in New Guinea. S. P., vol. 87, p. 18.

15 January, 1896. Anglo-French Declaration respecting Siam, the Lower Niger, Tunis, etc. S. P. vol., 88, p. 13.

20 January, 1896. Agreement with Portugal for a Modus Vivendi respecting the Boundaries of Spheres of Influence north of the Zambesi. S. P., vol. 88, p. 5.

8 February, 1896. Convention with the United States for the Arbitration of Claims in the Behring Sea Seal Fishery. S. P., vol. 88, p. 8.

22 February, 1897. Treaty with Venezuela in the matter of the Boundary of British Guiana. S. P., vol. 89, p. 57.

3 October, 1899. Venezuelan Boundary Dispute Arbitration. S. P., vol. 92, p. 160.

14 November, 1899. Anglo-German Convention and Declaration respecting Samoa, West Africa, and Zanzibar. S. P., vol. 91, pp. 70, 74.

16 October, 1900. Anglo-German Agreement respecting China. Parliamentary Papers. Cd. 365. China, No. 5 (1900).

23 February, 1901. Anglo-German Agreement respecting Spheres of Interest between Lakes Nyasa and Tanganyika. P. P. Cd. 1007. Treaty Series, No. 8. (1902).

15 May, 1902. Treaties with Ethiopia, and with Ethiopia and Italy respecting Frontiers between the Soudan, Ethiopia, and Eritrea. P. P. Cd. 1370. Treaty Series, No. 16. (1902).

12 August, 1903. Anglo-Portuguese Declaration respecting Boundaries in Central Africa (Barotseland). P. P. Cd. 3731. Treaty Series, No. 28. (1907).

8 April, 1904. Anglo-French Declaration respecting Siam, Madagascar, New Hebrides (*Entente Cordiale*). P. P. Cd. 2385. Treaty Series, No. 9. (1906).

also of the significant parliamentary struggle which is so close. We can imagine with what enthusiasm Mr. Gladstone would have spent himself in these days. We must also consider whether, if the conservative party win, in the coming elections and enforces a protective tariff, the opportunities are not materially increased for friction between England and Germany.[34] Furthermore, on turning home, as we recall the recent interested and enthusiastic talk of many Americans, we can also hope that a liberal victory would serve to enliven the essential sympathy of both peoples in the desperate and continuing battle for real democracy.

In conclusion, as we study both international questions and the present domestic problem in England, we can welcome the emphatic and triumphant declaration of Mr. Gladstone, made nearly sixty years ago, that it would

be a contravention of the law of nature and of God, if it were possible for any single nation of Christendom to emancipate itself from the obligations which bind all other nations, and to arrogate, in the face of mankind, a position of peculiar privilege.[35]

12 (25) November, 1904. Anglo-Russian Declaration relative to the North Sea Incident. P. P. Cd. 2328. Treaty Series, No. 13. (1904).

7 April, 1905. Anglo-French Agreement for the Arbitration of Newfoundland Fisheries' Disputes. P. P. Cd. 2737. France, No. 1. (1905).

29 May, 1906. Anglo-French Convention respecting the Niger Frontier. P. P. Cd. 3158. Treaty Series, No. 14 (1906).

16 August, 1906. Convention with the United States respecting the Canadian and Alaskan Boundary. P. P. Cd. 3159. Treaty Series, No. 15 (1906).

20 October, 1906. Anglo-French Convention respecting the New Hebrides. P. P. Cd. 3300. Treaty Series, No. 3 (1907).

16 May, 1907. Exchange of Notes with Spain maintaining the Status Quo in the Mediterranean and East Atlantic Ocean. P. P. Cd. 3576. Spain. No. 1 (1907).

6 December, 1907. Agreement with Ethiopia respecting Frontiers of British East Africa, Uganda, and Ethiopia. P. P. Cd. 4318. Treaty Series, No. 27 (1908).

11 April, 1908. Treaty with the United States for the Demarcation of the Canadian-American Boundary. P. P. Cd. 4139. Treaty Series, No. 18. (1908).

27 January, 1909. Anglo-American Agreement for Arbitration of the Fisheries Question. P. P. Cd. 4815. Treaty Series, No. 21 (1909).

22 February, 1909. 5 March, 1909. Exchange of Notes with Germany defining Boundaries in South Africa. P.P. Cd. 4699. Treaty Series, No. 17. (1909).

[34] Cf. for significant comment in Nov., 1884, as to German desire that England continue a policy of free trade: Busch: *Bismark*, II, p. 374.

[35] Hansard. 3d series, vol. 112, p. 586 (June 27, 1850).

RECENT ENGLISH HISTORY IN ITS CONSTITUTIONAL ASPECTS, WITH SPECIAL REFERENCE TO THE CENTENARY OF THE BIRTH OF GLADSTONE.

ABSTRACT OF MR. BRYCE'S ADDRESS

Mr. Bryce in speaking of the constitutional changes that had occurred within the period of Mr. Gladstone's political career, said that it had been a time of wide and momentous change, both economic and political. Among the political changes the most remarkable was the democratization of the constitution by the acts of 1867 and 1885 which extended the parliamentary franchise. Of these the former, that of 1867 though not carried by Mr. Gladstone, but by the Tory ministry of 1867, was really due to the bill brought in by Mr. Gladstone in 1866 when Lord Russel was prime minister and lost in the house of commons. It went rather further than Mr. Gladstone himself had proposed. The latter measure was carried by Mr. Gladstone as prime minister in 1884–1885. Both franchise acts were accompanied by redistribution acts extinguishing small constituencies and rearranging seats according to population. The disestablishment of the Protestant Episcopal church in Ireland accomplished by Mr. Gladstone in 1869 was also a constitutional change, and one of great moment. It altered a provision of the act of union of 1800. It was vehemently opposed at the time but is now generally admitted to have worked well for the Irish Protestant Episcopal church itself and for the general social peace of the country. Mr. Gladstone's financial measures during his tenure of the post of Chancellor of the Exchequer were a very important part of his life work but they do not in strictness belong to the sphere of constitutional development.

Mr. Gladstone was not himself specially versed in the earlier history and constitutional theory of the British constitution. That sort of knowledge was cultivated in his early days more by the Whigs than by the Tories, and he was never a Whig. The first Tory of eminence in later days who threw fresh light on English constitutional history was Dr. Stubbs. But Mr. Gladstone had an unequalled practical knowledge of the constitution as a working system. He enjoyed and under-

stood its undefined nature, its growth out of precedents and usage, and what he wrote about it is valuable as a record of his practical experience. Some of his views may be found in the collection of articles entitled Gleanings from Past Life which he published in his later years. Though his opinions on many constitutional questions, some of them burning questions at this moment, were known to those who were privileged to be much in his company, it is not for me to set them forth here and now. I may, however, say that he attached much value to the part assigned to the crown in our constitution, and that he was always solicitous for the due support of its dignity. Some people thought him indifferent to the maintenance of the political connection of Great Britain with the self-governing colonies, but there was no truth whatever in that impression. He was in reality very proud of the colonial empire of Britain, very desirous of its maintenance as a force for good in the world. Being, however, of a cautious temper he was not inclined to try experiments in the way of altering by law the relations of the self-governing colonies to the mother country. He thought that the existing ties of affection and reciprocal interest were sufficient to hold the fabric together. He would have been quite willing to fairly consider such projects as those advocated in his own day by the Imperial Federation League of which some of his supporters were—as I was—among the founders but he would, I am sure, have thought that proposals for a closer legal union ought not to be pressed upon the colonies, should they show any reluctance, but ought to proceed at least as much from the colonies as from the mother country.

Speaking generally, I would say that his strong faith in liberty and the beneficent power of liberty lay at the foundation of his political and constitutional views. This was what made him an advocate of the extension of suffrage; and the same faith governed his action in foreign affairs. He had been in sympathy with the national movement in Italy, so too he rendered powerful aid to the emancipation of the eastern christians. The progress which has been since made by the Bulgarian people justified the hopes he had formed for them.

Addressing historians, I may add that he was always an ardent student of history and showed hearty sympathy with those of us who founded, thirty years ago, the English Historical Review. He contributed to it a very interesting article upon a remarkable episode in our parliamentary annals.

THE NEW RÉGIME IN CHINA

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The real, purposeful preparation for a constitutional form of government in China, which forms the main theme of this paper, may be said to date only from 1908, but the need of a constitution had begun to be felt a few years before. Still older are those minor political reforms which were not at first consciously designed to pave the way for a constitutional régime, but which have had that practical effect to no small degree. A brief survey of the history of the gradual adoption of these reforms and of the rise of constitutional ideas in China may give one an insight into the character of her new régime and into some of the circumstances which must react upon its future.

Such a survey might well begin with the close of the war with Japan in 1894–1895, for, at length, the results of this war brought home to a few Chinese the urgent need of political reforms. Had not the reverses China suffered been inflicted by a little neighbor whom she had for more than fifteen centuries considered a pupil of her civilization, but who appeared, to China's great disgust, to have deserted the traditional kinship of East Asiatic culture, and adopted with slavish eagerness those occidental methods and institutions which China despised? The war was, in a sense, a struggle between the old and the new methods of political conduct. Did not China's defeat demonstrate the wisdom of Japan's course, and indicate that China should also revise her old policies, if she would maintain the dignity of a sovereign state? Such were the thoughts of a few patriotic Chinese of the period. Henceforth the close relation between the living example set by Japan and the reform movement in China should not be lost sight of by the student of the latter.

An Imperial decree of 1895 stated that the government should adjust itself to the conditions of the times, particularly at this critical period, and urged that all high officials present plans of changes which they might consider necessary for the recovery of national honor.[1] The many memorials called forth by this edict showed, how-

[1] *Tō-Aō Dō-bun Kwai hō-koku* for April, 1909, p. 3.

ever, still how undeveloped were political ideas of their writers, and how slowly they would advance in the path of reform. Nearly all discussed in eager but vague terms the need of financial and military reforms, but few ventured to suggest more fundamental changes or presented details of practical reforms. Only the reformatory measures proposed by K'ang Yu-weï[2] included, among other things, the promulgation of a constitution.[3] The idea, however, was couched in very general phrases, and otherwise would, in any form, have been too far in advance of the time to be practicable. The late Chang Chï-tung vigorously attacked the proposition, saying that, if the right of political discussion were granted to the people before they were sufficiently educated, "there would result not one good but a hundred evil effects," and stigmatized the idea as provocative of insurrection.[4] It is well known that even less radical measures advanced by K'ang and approved by the late emperor resulted, in 1898, in their utter failure and in calling forth a strong reactionary party in power at the court.

The anti-foreign uprising of 1900 was a direct result of the reactionary movement thus begun in 1898, but the humiliating lesson given by the powers during the Boxer war served to awaken even the conservative court to the wisdom of adopting at least a few measures of elementary reform. Again an imperial edict, issued early in 1901, ordered high officials to recommend to the throne plans for necessary changes.[5] The papers presented in response to the edict included the famous three memorials written jointly by the late viceroys Liu Kun-i and Chang Chï-tung,[6] and the one by Governor Yüan Shï-k'ai.[7]

The language of these memorials was perhaps even more impassioned than that of the memorials of 1895–8, and several contained simple suggestions of practical procedure. Few, however, dared to go beyond the limit of advocating the adoption of military, official, educational and economic methods of the more progressive nations. Even

[2] The transliteration of Chinese sounds in this paper follows the Hirth system as outlined in the *Syllabary of Chinese Sounds* (by Prof. Friedrich Hirth), in the *Carnegie Institution of Washington publication* No. 54, *Research in China*, vol. 1, pt. 2, pp. 511–528.

[3] *Tō-A*, etc., April, 1909, pp. 5–6.

[4] *Ibid.*, May, 1909, p. 15.

[5] *Ibid.*, pp. 7–14.

[6] *Kei-zai se-kai*, extra No. 3, 1902, pp. 1–123.

[7] *Tō-A*, etc., April, 1909, pp. 5–6.

of these inchoate propositions, none but two reformatory measures were actually executed by the court. First, the official system required certain changes: a new board of foreign affairs (*Wai-wu pu*) was, at the request of the Powers, organized in 1901, and superseded the old Tsung-li ya-mön; in 1903, a new commercial board (*Shang-wu pu*) was made; and, before these two boards, a new office was established, in 1901, called *Hui-i Chöng-wu ch'u*, bureau for the discussion of political affairs, composed of half a dozen grand councillors and secretaries and of the viceroys Chang and Liu, for the purpose of considering the opinions regarding political reforms advanced by officials and of making the bureau's own recommendations to the throne.[8] This last office served in subsequent years as an entering wedge for the constitutional movement, which gradually found its advocates among the more liberal memorialists. Second, it was believed urgent to establish a system of national education based partly on modern learning. The ethical teachings of Confucianism were to continue as the foundation of national education, but the material side of Chinese culture was henceforth to be supplied by the scientific knowledge of the Occident.[9] The commissionership of education was created in 1902; a comprehensive scheme of public schools of all grades[10] was promulgated in 1903; but it was not until 1906 that a full board of education was organized, and the antiquated system of examination based upon Confucian learning was abolished.[11] It should be noted that, neither in these initial reforms nor in the opinions submitted by higher officials, there was yet to be found any serious attempt to establish a constitutional form of government. Nor should it be forgotten that, up to 1908, it was provincial governments, notably those of the viceroyalty of Chī-li under Yüan Shī-k'ai and that of Hu-nan and Hu-pe under the late Chang Chī-tung, rather than

[8] *Tō-A*, etc., May, 1909, pp. 7–14; January, 1904, p. 64; etc.

[9] *Waseda gaku-hō*, March 1, 1905, pp. 9–20. *Tō-A*, etc., September, 1905, p. 1 ff.; December, p. 23; May, 1909, pp. 12–13, 20; November, 13–34. This last reference contains an explanation as to why there was so much less resistance than had been expected of the old scholars to the new educational system. Also, *ibid.*, December, 15–44.

[10] This scheme of school-system was largely adopted from the Japanese, but, in some instances, the Chinese system gives more hours per week and longer courses of study than the Japanese. It is needless to say that the system has not yet been completely put into practice, schools of the lowest and highest graces particularly being still very deficient.

[11] *Waseda gaku-hō*, March 1, 1905, pp. 9–20. *Tō-A*. etc., September, 1905, p. 1 ff., December, p. 23; May, 1909, pp. 12–13, 20; November, 13–34. Also, *Ibid.*, December, 15–44.

the central government at Peking, that led in the practical work of political reforms. This was inevitable from the important fact that, under an efficient governor, the provincial government could possess a relatively greater unity of control and greater financial resources than the still half-awakened, disunited, and impecunious central government at Peking.

Then came the convincing lesson of the Russo-Japanese war. The fact that the rival powers had been brought to an armed conflict on China's territory because of her very impotency aroused some of her people to a lively appreciation of the necessity of guarding her own sovereign rights with adequate strength. Moreover, the question as to how to strengthen herself seemed again to have found a ready solution in the case of the victorious neighbor, Japan. If the small Japan was able to become a fully sovereign state, there was little reason why China with her larger natural resources could not grow to be a greater power. But where was the secret of the success of Japan and other active nations, asked the thinking Chinese, and they arrived at the unanimous conclusion that the secret was in their constitutional régime that interested all classes of the people in their national affairs. These ideas are reiterated with remarkable simplicity of faith in nearly all the memorials and edicts regarding the establishment of a constitutional government that have appeared in China since the Russo-Japanese war.[12] Whatever one's opinion may be as to the truth and wisdom of these ideas as applied to China, he may justly regard them as a long step in advance of the vague and hesitant ideas of reform that were presented after the Boxer war.

[12] "The reason that other nations are rich and strong is: that by governing by constitutions and deciding by public discussion, they acquaint all the people with their financial and political conditions, so that the higher and lower classes share the same life and the officials and people act as one body. We, also, shall promulgate a constitution, uniting the sovereign rights in the hands of the emperor and deciding all affairs of government by public opinion, and shall thereby establish an eternal foundation of the state."—An imperial edict 7th month, 13th day (lunar calendar), 1906. *Tō-A*, etc., May, 1909, p. 19.

"At this critical time, the existence of the empire may be maintained only by the common effort of the government and the people, ... national progress may be stimulated and national efficiency secured only by the diligence and mutual correction of the officials and commoners . . . .." From an imperial edict August 27, 1908, granting outlines of the constitution, etc., to be promulgated nine years hence. *Ibid.*, September, 1908, p. 1.

For similar expressions in memorials and edicts, see *ibid.*, July, 1904, p. 40; October, 1904. pp. 20–25; July 1907, p. 32; etc.

At first, however the court was, as it still seems to be, encumbered by a large number of conservative spirits who, some from conviction and others from a sense of personal or class interest,[13] obliged the government to advance with faltering steps. It was not until the latter part of 1905, when the more progressive officials had presented urgent memorials and when popular clamor for a new régime had run high, that the Manchu court at last showed a disposition to investigate the possibility of installing a new order. It appointed special commissioners to visit the principal constitutional governments of the West and of Japan, and study their systems;[14] and, further, intimated in an order to the provincial governors that, while in Russia a constitution was forced by the people from the emperor, in China it would be granted by the throne.[15] In August, 1906 an edict proclaimed: "A constitution will be promulgated, uniting the sovereign rights in the hands of the emperor, but allowing all affairs of government to be decided by public opinion, and thereby an eternal foundation of the state will be established."[16] This was followed by the edict of July 8, 1907, saying, "a constitutional régime consists in a harmonious coöperation with disinterestedness and public spirit by all classes of the nation in all parts of the empire."[17] New commissioners were sent to Japan, England, and Germany, three constitutional monarchies, to study their institutions.

Simultaneously with these indefinite promises of a constitution, and as the first step of preparation for its granting, the government made, in 1906 and 1907[18], important though still inadequate changes in the official organization of the central and provincial administration. As these changes will continue in force for some time to come, and will have a large bearing on the success of the new régime, it is well to recall the nature of some of them.

It will be remembered that the official system under the old régime possessed many features which, however interesting in their historic development,[19] and however useful in the past, would seri-

[13] *Ibid.*, July, 1904, p. 40; March, 1905, pp. 57–58; etc.

[14] Their departure was delayed by an accident that occurred at the Peking depot. They were away from China during the first half of 1906.

[15] *Ibid.*, May, 1907, p. 17.

[16] *Ibid.*, p. 19.

[17] *Ibid.*, August, 1907, p. 27; February 15, 1910, p. 21.

[18] *Ibid.*, July, 1907, p. 83; August, 1907, p. 24 ff.; May, 1909, p. 20; June, 1909, pp. 30–41

[19] A highly satisfactory account of the historical development of the more

ously interfere with a reasonable conduct of affairs of a modern state. To enumerate only some of the more remarkable of these features. Both in the central and in the local government, the same officials often took part in two or all of the time-honored three functions of the Chinese high official,—namely, deliberative, executive, and censorial,— so that their duties ran into one another, and caused, not only confusion, but also a general lack of initiative and shirking of responsibility. In fact, many of the various offices in Peking and in the provinces being historic growths independent of one another in origin, and interests and traditions having grown about each of them during the long ages of its existence, these offices neither were properly coördinated nor could be reorganized without causing serious friction. A confusion of judicial and executive functions, together with the absence of a prosecuting machinery, characterized the lower grades of the provincial officialdom; and everywhere prevailed an ambiguous distinction between the execution of law and the administration of justice, and between police and military functions. The system of balancing with each other Manchu and Chinese officials by placing them in equal numbers in each important office in Peking had resulted in its multiple headship and often in the mutual jealousy and suspicion among the officials of the two races. Perhaps the most serious of all, there being no central office like the modern cabinet under an official control of a prime minister, but, on the contrary, all the chiefs of the boards and all the viceroys and governors of the provinces being in direct communication with the throne, there was always a lamentable lack of unity of control and of flexibility of action, whenever the sovereign was weak, and a continual danger of lapsing into despotism under a wilful emperor.

The new official organization for the central government made in 1906 introduced many improvements, including the abolition of the system of balancing Manchu and Chinese officials, giving to each board one chief and two assistant chiefs,[20] instead of two chiefs and four assistants, as heretofore; a remodelling of the boards of war, of justice, and of rites;[21] the amalgamation of the boards of commerce

important offices of the Chinese Empire has been published by Dr. Unokichi Hattori, in his valuable *Shin-koku tsū-kō*, vols. 1 and 2, Tokyo, 1905. Cf, in Pang-p'ing's article in *Waseda gaku-hō* or August, 1903.

[20] This change had been made in one or two boards a few years before, but was now made universal.

[21] It is impossible in this limited space to describe the character of the remodelling of these boards now at last effected. Mayers' work, referred to below,

and of public works into one board; and the creation of the board of communications. It should be noted, however, that the ill-defined and confusing functions of the majority of offices remained unaltered, and a plan to introduce a cabinet system was defeated.[22] There still are, therefore, all in direct relation to the emperor, the grand council (*Kün-ki ch'u*), the secretariat (*Neï ko*), the bureau for the discussion of political affairs (*Hui-i Chöng-wu ch'u*), the office for compiling the constitution (*Hién-chöng pién-ch'a kuan*), the office for revision of laws (*Siu ting fa-lü kuan*), and the boards, now numbering eleven—of foreign affairs (*Wai-wu pu*), of officials (*Li pu*), of civil administration (*Min-chöng pu*) of finance (*Tu-chï pu*), of rites (*Li pu*), of education (*Hio pu*). of army (*Lu-kün pu*), of justice (*Fa pu*), of agriculture, manufacture and commerce (*Nung-kung-shang pu*), of communications (*Yu-ch'uan pu*), and of the dependencies (*Li-fan pu*),—besides some other offices which have comparatively little relation to the new régime.[23]

As regards the provincial government, it is enough to remark that the new system relating to its official organization, which was provided in 1907, while it advised, among other things, the establishment of local courts of justice, thus aiming at the separation of the judicial from executive business, contemplated no change in the status of the viceroy or governor. He still, on the one hand, is directly responsible to the throne, and, on the other, exercises enormous powers, civil, military, and diplomatic. It will be seen later that the new régime is apt to bring about important changes in these respects.

It will now be observed that up to the end of 1907 the government had promised a constitutional reform only in general terms, and appeared to have been guided by no definite plan of practical prepara-

has been a useful guide to students of the Chinese government under the old régime; it will before many years become necessary to have as valuable a compendium of the official organization of the new régime.

[22] *Tō-A.*, etc., March, 1909, pp. 12–13.

[23] Of these, may be mentioned the department of the imperial household (*Tsung-jan fu*), the college of literature (*Han-lin yüan*), the bureau of taxation (*Shui-wu ch'u,*) the military council (*Kün-tzï ch'u*), the court of revision (*Ta-li yüan*), and the censorate (*Tu-ch'a yüan*). The Han-lin yüan has recently been slightly reorganized. See *Tō-A.*, etc., December, 1909, p. 53.

The offices of the old régime are explained in W. F. Mayers' *The Chinese Government: a Manual of Chinese Titles*, etc., Shanghai, 1878, part ii. Also see H. S. Morse, *The Trade and Administration of the Chinese Empire*, New York, etc., 1908, pp. 53–59.

tion, but to have been impelled by the growing public demand for a new régime to move along with uncertain steps. This state of things was due largely to the lack of unity, lack of strength and financial resources, and lack of experience in such affairs, that characterized the Peking government. It was probably in order to remedy this situation that the viceroys Chang Chī-tung and Yuan Shī-k'ai—two local magnates who had been carrying out reformatory measures in their respective provinces with much greater wisdom and facility than the central authorities—were, on September 4, 1907, relieved of their provincial posts, and appointed grand councillors to the throne. Prince Shun, now the prince regent, had also just taken the same office. The year 1908 dawned with much brighter prospects for reform than any previous year, and, with the support of the new councillors, steps were taken which at once secured the certainty of the new régime and determined its larger aspects. Then occurred, on November 14 and 15 of that year, the successive demise of the Emperor Kwang-sü (posthumous title: Tō-tsung King-huang-ti) and the empress dowager, followed, on January 2, 1909, by the dismissal of Yuan Shī-k'ai, on October 4, by the death of Chang Chī-tung, and, in December, by the abrupt downfall of the progressive Viceroy Tuan Fang.[24] These unfortunate events have not, however, seriously interfered with the progress of the new régime, which, having already acquired a sufficient momentum, and under the intelligent leadership of the young regent, has been making its way against great odds. Let us now describe those specific measures of reform which have been taken since the auspicious year 1908.

On August 27, 1908, general outlines of the new constitution and of the laws of the national diet and of election to be promulgated nine years hence were published,[25] together with a tentative program of preparatory reforms to be undertaken year after year during the intervening period. This programme has since been extended,[26] so that in its present form it comprises all phases of the political life of the nation.

The published outlines of the constitution include, among other things, the following fundamental features. The constitution is

[24] It being beyond the purpose of this paper to discuss the practical politics of the court of Peking, we refrain from making extended references to the more important personages in the Chinese government. For the probable reasons for the downfall of Tuan Fang, see *Tō-A*, etc., January 15, 1910, pp. 36 ff.

[25] *Tō-A.*, etc., September, 1908, pp. 1–10.

[26] *Ibid.*, pp. 10–16; October, 1908, p. 53; July 1909, p. 15 ff.; August, 1909, p. 18 ff.; October, 1909, p. 53 ff.

to be granted by the emperor. He is sacred and inviolable, and his successors should for eternity follow the same line of descent. In him are vested all the sovereign rights of the state, but he graciously creates organs to assist him in the exercise of some of these rights. The constitution, however, and the laws of the imperial household, will be framed without the assistance of the diet. The emperor convokes, opens, closes, suspends, and dissolves the diet, presents bills to it, and sanctions and promulgates laws passed by it; he determines the organization and the salaries of the officials, and appoints and dismisses the same; he determines the organization of the army and navy, and has supreme command of them; he declares war, makes peace, concludes treaties, and exhanges envoys with other nations; he proclaims the law of siege, and, at critical times, restricts the freedom of the subjects by means of imperial rescripts; he confers marks of honor, and grants pardon; he has the judicature, and charges the courts of law to exercise it in accordance with law, which courts shall not be changed by imperial ordinances; he issues or causes to be issued ordinances, but the latter shall not alter or abrogate laws; in case of emergency, and if the diet is not in session, he issues imperial ordinances in the place of law, and takes the necessary financial measures by means of an imperial ordinance, but the matter shall be submitted to the diet at its next session. The Chinese subjects, according to qualifications determined by laws and ordinances, may be appointed to civil and military offices, and be elected nembers in representative assemblies; and within limits prescribed by law, enjoy liberty of speech, writing, publication, public meetings, and associations; right of demanding justice from judges, and of being tried at courts of law; and inviolability of their property and residence. The subjects shall not be arrested, detained, or punished, unless according to law. They are obliged to observe laws, to pay taxes, and to render military service.

It will be seen at a glance that all these clauses relative to the emperor and subjects of China contained in the provisional constitution have been adopted, almost word for word, from the Japanese constitution promulgated twenty years ago.

According to the outlines of the law of the nationl diet, the latter will consist of two houses; it will possess, to use the euphemistic expression of the original document, "the right of proposition, but no duty of execution;" its decisions may,—the text does not say, should,—with imperial sanction, be executed by the government. The annual budgets, as well as all the new laws—though this latter point is not

stated, and is only inferred from other sources—will require the consent of the diet. The diet may also discuss questions proposed by its members which concern the interest of the whole empire, but not provincial or local questions. If a high official of the government acted in violation of law, the diet might submit to the emperor the proof thereof, and impeach the offender,—a clause which does not find its parallel in the Japanese constitution,[27]—but the diet should not interfere with the imperial authority to appoint and dismiss all officials.

The published outlines of the law of election are very meagre, and do not indicate either the qualification for the voter and for the candidate, the division of electoral districts, or the method of election.

The nine-year programme of preparation for the full establishment of a constitutional government is comprehensive, but, in many details, still tentative. A few important steps may be briefly summarized. The general programme begins with the thirty-fourth year of Kwang-sü and ends with the eighth year of Süan-tung, or, roughly speaking, from 1908 to 1916.[28] (1) The population of the empire will be examined, according to the new law[29] published in the first year, and will be finally reported in the fifth year; in the meantime, a new law of census will be framed in the third year, and put in force in the sixth. (2) In relation to education, schools of lower grades will be extensively established, and text-books compiled, so that in the ninth year the ratio of the illiterate to the general population will have been reduced to 95 per cent.[30] (3) Laws of self-government for the smaller local divisions will be published in the first and second years, (the first set of these laws, granting self-government to the smallest local divisions, has, as will be seen later, since been issued), and be gradually put into practice before the seventh year is over. (4) Police duties, which have hitherto been partly performed by the village, will be put into the hands of specially constituted authorities to be fully organized by the eighth year.

[27] The Japanese constitution provides that the houses of the diet may present addresses to the emperor, but it has no special clauses for the impeachment of cabinet ministers. The right of addressing the throne may perhaps be used for that purpose.

[28] The first day of the Chinese lunar year falls somewhere between January 21 and February 19 of the Gregorian calendar.

[29] Promulgated January 1, 1909. See *Tō-A*, etc., February, 1909, p. 41 ff.; April, p. 56.

[30] A real university and a peers' school, among other things, are also contemplated.

(5) As regards the department of justice, a new penal law will be in force in the sixth, and new civil and commercial laws and law of procedure, in the eighth year;[31] while law courts of all grades will be gradually established between the second and the eighth year.[32] These measures are designed, it is needless to say, not only to insure an efficient administration of justice to the Chinese citizens, but also to throw off the yoke of the extra-territorial jurisdiction of foreign nations in China. (6) A law of civil service will be made and enforced between the second and fourth year, and a new official system for the central and provincial government will be framed and tested, and finally adopted in the ninth year. One may be sure that a large part of the destiny of the new régime will depend upon this revised system, whatever it may be. (7) Regarding finance, a law of reorganizing provincial and national finances will be promulgated in the first year, (this law has been published);[33] provincial revenues and expenditures examined during the second and third years, provincial budgets and reports for each past year begun in the third, and a law of local taxation published in the fourth. Likewise, national accounts and national taxation will have been fully systematized by the ninth year, and a bureau of audit established in the eighth. A gold monetary standard will be gradually introduced and completely established in ten years.[34] (8) A system of conscription will probably be adopted, and a large army, with the appertaining military institutions, will be gradually built up; a rehabilitation of naval strength is planned; and the emperor will assume supreme command[35] over the army and navy. (9) The legal distinction that has existed between the Manchu and Chinese population and has been a cause of antipathy between the two races, will be obliterated by giving adequate means of livelihood

[31] See Li Kia-kü's views on the codes to be framed, *Tō-A*, etc., October, 1909, pp. 60–61.

[32] The establishment of law courts has thus far been one of the least encouraging features of the new régime. Except two or three, most of the provinces have shown lack of both zeal and men in this most important work.

[33] On January 11, 1909. See *Tō-A.*, etc., February, pp. 33–40.

[34] *Ibid.*, October, 1908, p. 41; January 15, 1910, p. 22.

[35] That the emperor of Japan takes the supreme command of her army and navy, though he naturally does not personally see the detail of their management, contributes powerfully to the unity and strength of her military forces. It is not strange that China has adopted the same idea. Cf. Ta Shóu's memorial, *Tō-A*, etc., October, 1908, p. 35. The practical difficulty of this measure in China, where the most efficient armies have for many years been provincial armies, will be considerable.

to the Manchu Bannermen and their families, perhaps numbering two million souls, and, by the eighth year, completely incorporating them in the census on the same footing as the Chinese. It has already been shown that the old system of maintaining an equal number of Manchu and Chinese chief officials at each central board is no longer in force. It is evident that the imperial house has determined to depend upon the loyalty of the entire nation, rather than, as has obtained hitherto at least in theory, governing the conquered race under the military control of the conquering tribes whom the former were obliged to support.[36] (10) It is well known that it is planned that the importation of opium and the cultivation of the poppy will be completely stopped before 1917.[37] (11) The provincial assemblies will be organized in the second year and be henceforth annually convoked. (The first annual sessions were concluded between November 24 and December 2, 1909.) (12) The provincial parliament will be elected in the second year, and convened annually from the third. (13) Finally the laws of the imperial household, the constitution, and the laws of the diet and of election, will be promulgated, and the first general election for the diet will take place, in the ninth year, namely, in 1916. The year 1917 will witness the first session of the new diet.

In looking over this comprehensive scheme of preparation, one would wonder how the Chinese government intends to meet the enormous expenditures that the vast work must necessarily involve. The central and provincial governments already bear foreign loans amounting nearly to seven hundred million dollars gold[38] while the total recorded revenue of the empire hardly exceeds one hundred million

[36] See *ibid.*, August, 1907, p. 29; August, 1908, pp. 18, 50; September, pp. 10–15; December, p. 48; March, 1909, pp. 41, 66. It could not be expected that the abolition of the distinction of legal status between the two races would also do away with the sentimental difference between them. A keen rivalry prevails at this moment between Manchu and Chinese politicians in Peking, and it constitutes one of the deterrent features of practical politics militating against the success of the new régime.

[37] This measure has thus far been perhaps the most enthusiastically executed and most promising of success of all the proposed measures of reform. *Ibid.*, September, 1908, p. 52; February, p. 70; April, pp. 52, 56, etc.

[38] *Ibid.*, August, 1909, pp. 5–8; January 15, 1910, pp. 32–36. At the end of 1908, the aggregate of the financial obligations of China to foreigners was as follows: 15 loans relating to the Japanese and Boxer wars, £115,353,590; 12 loans relating to railways, £18,100,000; 3 other loans, £5,103,489; total, £138,-557,079, or 923,713,860 taels. Of this sum, about 700,000,000 taels, involving interest charges of about 30,000,000 taels, were owed by the central govern-

taels, or, at the average rate of exchange in 1908, sixty-five million dollars. The indemnities and loan charges consume fully 40 per cent of this sum.[39] The cessation of the importation of opium will deprive the government of an annual income of twenty million taels, which is the present revenue from the import duty levied on this article,[40] and the possible abolition of the *likin* will further cripple the provincial finances, while the increased price of salt recently made will be far from supplying the deficiency caused by the loss of the opium duty. The stamp tax[41] introduced in 1909 is exceedingly unpopular, and has been opposed by fifteen of the twenty-one provincial assemblies whose first session has just closed. Many of the provincial governments, including some of the richest, are already in serious financial embarrassment;[42] and the conditions of the central government, which, while largely depending upon the support of the provinces, is itself obliged to support some of them, are alarming. It is true that when the present national and provincial finances, which are in a chaotic state of confusion, are reorganized in accordance with the published plans,[43] there would be discovered means of better government economy. It is well known, however, that the execution of this plan is beset with enormous difficulties, and its results thus far have been of the most discouraging character.[44] A memorial recently presented to the

ment. There are some other provincial loans not included in the above aggregate.

[39] *Koku-min shin-bun*, December 25, 1909.

[40] *Tō-A*, etc., November 1909, p. 76.

[41] It was provided that all transactions in property should require stamps at the following rates: For property under 1000 taels of market value, a stamp of 0.02 tael: for property under 10,000 taels of market value, a stamp of 0.10 tael; and for property above 10,000 taels of market value, a stamp of 1.00 tael. A stamp of one tael was required in registering each case of the inheiritance of properties. *Ibid.*, July, 1908, pp. 23–24; January, 15, 1910, pp. 22, 36, 45.

[42] Thus far the financial reports rendered by the provinces show deficits in nearly all cases. *Ibid.*, January 15, 1910, p. 52.

[43] For this plan, see *ibid.*, February, 1909, pp. 33–40; January t5, 1910, pp. 22–44.

[44] For example, the financial reports of the provinces for 1909 are said to contain many discrepancies from their normal accounts expected from the provinces, owing in some instances to the authorities who have made questional uses of public funds. The financial commissioner of Kansu failed to make any report, and has been dismissed from the office. In the Peking government, there is as yet no central exchequer, each board having barely succeeded in consolidating its own accounts.

throne by the board of finance contained the following statement: "If the normal process of adjusting expense to income should be discarded, but if the new notion that the income should be planned according to expenses should prevail, and all the works of the new régime be begun at the same time, each office acting according to its own ideas with little regard to the financial resources of the country, we fear that the treasury would be depleted before the nine-year preparation was completed, and the future of the constitutional government would be jeopardized."[45] It is, moreover, likely that, as soon as financial questions appear in the new representative assemblies, there would arise bitter struggles between the governor and the people, as well as between the provinces and the Peking government. The most important consideration is, of course, that the new expenditures incident upon reformatory measures will continue to increase on a large scale. The necessary undertakings of reform could hardly be attempted without recourse to foreign capital, while every additional foreign loan would bring China nearer bankruptcy and foreign interference with her finances in the most serious form. It is not too much to say that the Chinese empire is building between two fires, namely, between, on the one hand, the old habit of corruption and inertia, eking out a half-independent existence among the mutually jealous powers, and, on the other, a career of reform securing national strength but involving a probable loss, at least temporarily, of financial autonomy. The latter is perhaps the lesser evil, but the vast majority of the influential population of China would be strongly opposed to the outcome, and are already alarmed at its probability.[45a] Nor is it

[45] *Tō-A*, etc., November, 1909, p. 76.

[45a] The critical condition of the finances has at last aroused some Chinese to action. A rumor was current in China a few months ago that the Powers would discuss at the Hague the desirability of instituting an international commission to take over the management of the Chinese government finances. The negotiations then going on regarding further immense loans for China for the building of new railways and for the "neutralization" of some old ones, and the published interview of Secretary Knox explaining the motive of the American government in this movement, tended strongly to confirm the ominous rumor just referred to. Many patriotic Chinese in Tientsin then conceived the heroic idea of preventing the crisis that seemed so imminent by freeing the government from financial obligations incident upon the Chinese-Japanese and Boxer wars, amounting probably to seven hundred million taels, by means of voluntary contributions made by all the people in the country. The provinces were appealed to, and all have responded with

evident that the authorities of China are determined, either to avert the crisis by effective measures, or to brave the temporary humiliation abroad and violent opposition at home for the sake of ultimate good.

To return to the actual work of reform, among the practical steps that have been taken since the beginning of the period of nine years of preparation, should be noted the promulgation, on January 18, 1909, of the laws granting self-government to the smaller local divisions,[46] and, on July 22, 1908, of the laws creating the provincial assemblies[47] and, on September 21 and October 26, 1909, of those regarding the provisional parliament.[48]

Local self-government is defined in the first article of the law of January 18, 1909,[49] as the management, under the supervision of local officials, and with a view to supplementing the administrative work of the latter, of local affairs of public interest by members elected in the locality. It is emphasized that self-government is not independent of, but supplementary to, official administration, and that it is to be carried on under official supervision. All domiciled male citizens over twenty-five years of age paying more than two *yuan* (silver dollars) of taxes, excepting the illiterate, opium smokers, public officials and a few other classes of unqualified men[50], have the right to elect and be elected members of the local assembly. The assembly, called *I-shï hui*, consists of from twenty to sixty members, according to the population of the community, one half of the members, being elected by the richer citizens who together pay 50 per cent of the taxes returned from the

wonderful readiness. Correlated associations have been organized to persuade *all* the citizens in the twenty-two provinces, high and low, young and old, to contribute to the general fund according to a definite system. Whether this colossal movement will succeed will be observed with lively interest by all friends of China. *Tō-A* etc., January 30, 1910, pp. 26–30.

[46] *Ibid.*, April, 1909, pp. 8–46.

[47] *Ibid.*, August, 1908, pp. 16–44.

[48] *Ibid.*, August, 1908, pp. 13–15; September, 1909, pp. 41–46; November, 1909, pp. 49–61.

[49] This law applies to the smaller local districts called *ch'ŏng*, *chŏn*, and *hiang*,—the *ch'ŏng* being the seat of the government of the larger divisions, *fut'ing*, *chóu*, and *hién*, and *chŏn* being now defined as a community with more than 50,000 inhabitants, and the *hiang*, with less. The law of self-government for the *t'ing*, *chóu*, and *hién*, will soon be promulgated.

[50] Soldiers, policemen, religious teachers, and students.

community.[51] The members receive no compensation.[52] The assembly meets four times each year regularly for fifteen days in each session. It discusses, usually in an open session, affairs relating to education, public health, public works, agriculture, commerce, and industry, care of the dependent, and the like; frames minor rules of self-government for the community; and oversees the finances necessary to the conduct of these affairs.[53] It also hears and composes differences among the people which relate to the entire community.[54] The assembly elects, by a single ballot, from among the entire body of the eligible men of the commune, a small executive council, called *Tung-chĭ hui*, in case of a commune with a population of more than 50,000, or a local chief (*Hiang-tso*) and his assistant (*Hiang-tung*), in case of a smaller community,[55] the term of office being two years both for the assembly members and for the executive. When the assembly and the executive disagree about local affairs, an appeal may be made to the assembly of the next larger local division, thence, if necessary, to higher local officials, and thence again to the provincial assembly.[56]

It is often said that the Chinese nation has for ages been accustomed to village self-government, and the imperial edict granting the new law emphasizes this point. While this is a fortunate fact for the political life of the local district, it should also be remembered that the new system of self-government is different from the old[57] in several important respects. The new system makes a much more distinct division of work between the official and the popular share of local administration. It also creates a regular deliberative organ, which the old system possessed, if at all, in an inchoate and indefinite form,

[51] These provisions closely resemble those in the law of the *shi*, *chō*, and *son*, of Japan, of 1888, amended in 1889, 1898, and 1900. *Gen-kō hō-rei shu-ran*, compiled by the Bureau of Records of the Cabinet, Japan, 1907, vol. 1, part 5, pp. 29–76.

[52] *Ibid.*

[53] *Ibid.*

[54] *Ibid.*

[55] *Ibid.*

[56] The Japanese law provides for a further appeal to the court of administrative law or to the minister of home affairs. *Ibid.*

[57] By the old system are meant the historic institutions of *pau* and *kia* (groups of houses and families for mutual protection and exhortation), *hiang-chŏng* and *tsu-chŏng* (respectively, village and clan heads), *hiang-yo* (rules for the moral conduct of the villagers), etc.

and, even in the executive business, an element of regular discussion is now introduced in the larger communities. The range of the business of the self-government itself has also been radically changed, police and semi-moral functions of the old village-heads being now either transferred to other hands or withdrawn, and new functions relating to education, public health, public works, and industry, being added. It is likely that a successful operation of the new system will require a kind of men and kind of training largely different from those that controlled the old.[58]

The provincial assembly, or *Tz-ïkü* in Chinese, contains from thirty to one hundred and forty members[59] elected for three years, by a system of double election, from among the male citizens over thirty years old. The voters at the first election, should be male citizens over twenty-five years of age, who have either been in public service for more than three years or in official position, or received secondary education or literary degrees, or who hold in the province property or capital of more than 5000 *yüan* in value.[60] As in the case of the local

[58] *Tō-A*, etc., June, 1909, pp. 23–25.

[59] Pending the taking of an accurate census, the school statistics and the returns of the rice-tax to Peking from the province are made the basis for the assigning the number of members to its assembly. The following are the numbers thus assigned: Chī-li, 140; Kiang-ning, 55; Kiang-su, 66; An-hui, 83; Hu-pe, 80; Hu-nan, 82; Shan-tung, 100; Ho-nan, 96; Shan-si, 86; Shen-si, 63; Kan-su, 43; Sin-kiang, 30; Szī-ch'uan, 105; Kwang-tung, 91; Kwang-si, 57; Yun-nan, 68; Kui-chóu, 39; Fōng-t'ien, 50; Ki-lin, 30; and Héi-lung-kiang, 30.

[60] According to the information already received, the ratios between the total population and the primary voters, and between the latter and the assembly members, are as follows:

	POPULATION	PRIMARY VOTERS	VOTERS PER 1000 POPULATION	MEMBERS	VOTERS FOR EACH MEMBER
Chī-li	20,937,000	160,000	76.41	140	1,142
Fōng-t'ien	5,500,000	52,670	95.76	50	1,534
Hei-lung-kiang	1,500,000	4,446	29.64	30	148
Kiang-su	13,980,000	59,600	43.57	66	903
An-hui	23,670,000	77,902	32.57	83	938
Kwang-tung	31,865,251	141,000	43.9	91	150

The great disparity of the ratios in the different provinces are noticeable. *Tō-A*, etc., November, 1909, pp. 75–76.

self-government assemblies, the following have no right to elect or be elected members of the provincial assembly: the disorderly and quarrelsome, the bankrupt, the demented, the illiterate, the opium smokers, the actors and bond-servants, and those who have been punished for crimes; and the following are suspended their franchise: the officials and their private secretaries serving in the province, soldiers, police officials, religious teachers, students and teachers in primary schools. The elected members receive no compensation, except their traveling expenses. The assembly meets annually from the first day of the ninth month to the eleventh day of the tenth month (of the lunar calendar). It discusses, in a usually open session, financial matters, legal changes, as well as new undertakings or reforms, all relating to the province. It considers propositions and petitions from the people, hears disputes in self-governing bodies, and answers questions asked by the governor. It also elects from among its own members its share in the half of the members of the provisional parliament who are returnable from the provincial assemblies. The assembly may interpellate provincial authorities on matters of administration, though the latter might decline to respond, if the question required secrecy. The assembly may impeach to the governor a public official engaged in corrupt practices or violation of law.[61] The governor may, for specific reasons[62] defined in the law, suspend the sessions for a period less than a week, and, with imperial sanction obtained from the provisional parliament, dissolve the assembly.

A comparison of these provisions regarding the qualifications of the candidate and of the voter with the corresponding provisions in the Japanese law (of 1899)in relation to the city (*Fu*) or prefectural (*Ken*) assembly is instructive. Japan requires a property qualification of the voter—three *yen* or more of direct national tax, and a higher one of the candidates—ten *yen* or more, while in the Chinese law, the qualification for the voter is varied in a most interesting manner, and the candidate needs no property qualification. See *Gen-kō* etc. vol. 1, pt. 5, pp. 1–10.

[61] These provisions are absent in the Japanese law.

[62] Occasions for suspensions are: when the assembly has acted beyond its rights and did not heed the admonition of the governor, when its resolution is in violation of law, and when its conduct is disorderly beyond the control of its president. The following constitute reasons for dissolution: when the resolution of the assembly implies disrespect to the emperor, when it jeopardizes the peace of the state, when the assembly does not obey an order for suspension or does not change its attitude after repeated suspensions, and when the majority of the members do not respond to repeated orders of convocation.

These specifications do not obtain in the Japanese law.

The resolutions of the assembly should be executed by the governor, but if the two should fail to agree in this respect, the assembly should refer the question to the provisional parliament.[63] It may also refer to the same body any act of transgression committed by the governor against the rights of the assembly or against law, as also a dispute between the province and another province.[64] In these cases, the provisional parliament shall submit the case, with its own recommendations, to the emperor.[65] As one half of the members of the national body are chosen from the provincial assemblies, the latter may expect in the former a large degree of sympathy for their cases against provincial authorities.

The first annual session of the provincial assemblies (except that of Sinkiang[66]) has just closed. Their conduct has been differently criticised by observers. Dr. Morrison, the Peking correspondent of the London *Times*, has noted their common want of sympathy for the difficulties of the central government, and their excessive chauvinism. He describes the spirit of the assemblies as "iconoclastic, patriotic—in the sense that it denounces everything foreign—but lacking, so far, in intelligent leadership and constructive policy." He already observes "the coming chaos," "the first whispering of the approaching storm" between the radical provincials and, as he thinks, the insincere and incapable central authorities.[67] The impressions gathered by some Japanese observers are, however, by no means so pessimistic.[68] In many a province, the preparation for the session had been planned with much care and zeal, and the double election passed off with relatively little corruption and in remarkably good order. The elected members seem mostly to consist of gentry highly regarded in their respective provinces, with some men of educational and mercantile occupations, as well as rather small numbers of young men of modern education. When the session was about to begin, the regent and the governors issued edicts and orders counseling to all persons concerned public-

[63, 64, 65] These provisions also are not found in the Japanese law.

Altogether the Chinese law of the provincial assembly is several degrees more liberal than the Japanese law of the city and prefectural assemblies.

[66] It was decided to postpone until 1912 the opening of the assembly of this distant province, where the ethnic elements are heterogeneous, education is meagre and qualified voters are relative few. *Tō-A*, etc., July, 1909, p. 33.

[67] The London *Times*, November 23, 1909.

[68] *Tō-A*, etc., April, 1909, pp. 57-59; May, pp. 31-38; November, pp. 36-46 65-67; January 15, 1910, pp. 1-9, January 30, pp. 1-12; *Koku-min shin-bun for* December, 16; *Man-shu nichi-nichi shin-bun* for November 18.

spiritedness and good behavior, and the assemblies opened in the twenty-one provinces, on October 14, under favorable auspices. The subjects for discussion comprised, besides the bills submitted by the governors, a large variety of topics relating to provincial affairs. In some assemblies, a general lack of interest seemed to characterize the majority of the members, while in others trifling matters regarding the etiquette between the assembly and the governor led to heated debates. Important resolutions were passed by some assemblies, including that of Chī-li to establish a large spinning mill, that of Kiang-su to institute a general movement of all the provincial assemblies for the convocation of the national diet before 1917,[69] and that of Shan-tung to act in concert with all the other provincial assemblies regarding important questions.[70] The general oratorical powers of such members as took part in the debates were highly appraised by Japanese observers. It does not appear that the present session has seen much bitterness in the relation between the assemblies and the provincial and central authorities. It is true that fifteen assemblies passed resolutions denouncing the new stamp-tax, and that the assembly of Hu-pe very nearly expressed a decided opposition to the building of the Hankóu-Canton and Hankóu-Szīch'uan railways by a foreign loan.[71] It is however, perhaps inevitable that future sessions will be very different from the present, for the provincial budgets, which will be discussed in the assemblies only after 1910–1911, are apt to become the great bone of contention between the people and the authorities, and to lead to acrimonious controversies in the assemblies. The latter's right of appeal and impeachment might then find a frequent application. Granting that may be the case, however, it does not follow that therefore the future of the assemblies is doubtful. One may turn to the experience of the Japanese imperial diet in the first years

[69] *Tō-A*, etc., January 15, 1910, p. 49, February 15, pp. 21-26. These enthusiasts would have the diet convened in a couple of years, but their first petition of January 16 was met by a courteous but firm declination by the regent to shorten the period of preparation.

[70] These questions were: the appointment and transfer of the viceroy or governor; international questions of railways and mines; copper currency; and public and private schools of law and politics. *Ibid.*, December, 1909, p. 54.

[71] Finding that the provincial assembly had no right to discuss diplomatic questions, the matter of the railway loan was discussed no further, but was taken up as the sole subject of discussion by the specially organized railway council. *Koku-min shin-bun* for December 25, 1909; *To-A*, etc., January 15, 1910, pp. 25-28.

of its existence, in which the lack of training and the youthful enthusiasm of the newly elected members drove many of them to assume an extremely radical and chauvinistic attitude. This state of things did not outlive the great events that have since befallen the nation and have deepened the mind of the diet. It is likely that the Chinese assemblies will go through a similar stage of political experience. Whether the dangers arising from it will prove overwhelming must depend upon the future course of events in China and the degree of enlightened patriotism with which her government and people will meet them.

The law concerning the provisional parliament called *Tzï-chŏng yüan*, which will be first convened in 1910, was promulgated on September 21,1909,[72] and the law of its election, on October 26 of the same year. This uni-cameral body is designed to prepare the way for the institution of the national diet in two houses. The provisional parliament will consist of two hundred members, a half of which number will be appointed by the emperor from among titled members of the imperial family, the hereditary nobles, and the tributary chiefs of the dependencies, and from among those elected and recommended by their peers[73] in the following four classes: the untitled members of the imperial family, officials of the central government between the fourth and seventh rank and learned scholars and wealthy gentry of the empire. The other hundred members will be selected by the governors from among twice as many men elected by the provincial assemblies from among their own members. The provisional parliament will discuss all the financial matters of the empire, all the new laws (excepting the constitution and the laws of the imperial household)

[72] This superseded the tentative plan published on July 22, 1908.

[73] The learned scholars are, however, selected in the first instance, not by the their own class, but by high officials of the central and provincial government and by ministers accredited to foreign countries. The number of the members representing each of the seven classes that return the hundred members, and the number of men recommended to the throne for its final selection by each of the last four of these classes, are as follows: (1) Titled members of the imperial family—16 out of the whole class; (2) hereditary nobles—12 out of the whole class; (3) chiefs of the dependencies—14 out of the whole class; (4) Untitled members of the imperial family—6 out of the 60 recommended; (5) government scholars— 32 out of the 160 recommended; (6) learned scholars—10 out of the 30 recommended; (7) wealthy gentry—10 out of the men elected by their peers in the provinces, no province allowing more than twenty wealthy men to take part in the election, and each province electing one-tenth of the number of its qualified wealthy voters.

and new changes in old laws, and such other matters as are referred to its deliberation. On specific grounds defined in the law,[74] the provisional parliament may be suspended or dissolved by imperial order. The parliament may consider direct petitions from the people and make them subjects for discussion. The parliament may put questions to a provincial assembly regarding provincial affairs. It also should submit to imperial decision all disputes between a provincial assembly and another or between the assembly and governor of the province, as well as an impeachment of the governor by the assembly. As regards the relation between the provisional parliament and the central government at Peking, it is provided that if the parliament and the chief of a board or a grand councillor should disagree, the case should be referred to the throne; likewise, the parliament may refer to the emperor, with the concurrence of more than two thirds of its members, an arbitrary act of a high official committed in violation of law or in disregard of the rights of the assembly.

These last provisions give the representative assemblies of all grades in China a unique feature which finds no exact parallel in the Japanese system. They may perhaps be regarded as a new application of the old Chinese principle of official censorship, which in its turn was derived from the ancient doctrine that the loss of virtue should cause the loss of political power. Apparently liberal and democratic, these provisions are further significant, when they are considered in relation with the absence in the Chinese government, already alluded to, of premiership and a cabinet system. From the most interesting historic development peculiar to China, all her high officials of state, as well as provincial governors, stand individually and separately in direct relation with the emperor. A reference to the throne of all cases of differences between the parliament and any chief executive official would therefore be a necessary course of action. At the same time this provision would signify a large increment of the already enormous theoretical powers of the throne, for it creates another powerful system of machinery under a direct control of the emperor. To him will the provisional parliament refer, not only its differences with high officials, but also all the appeals that come from the provisional assemblies regarding disputes among themselves or between them and

[74] Reasons for suspension and dissolution are similar to those that are stated in the law for the provincial assembly. A suspension should not exceed fifteen days.

governors. Add to this the large appointive power of the throne—whatever that may mean in practice—over a half of the members of the provisional parliament. From these considerations, one is compelled to ask if, behind these measures, may not be discerned the solicitous care of the throne, if possible, to increase and perpetuate its powers, in spite of, perhaps even by means of, the new régime, and thus to forestall the recurrence of those dynastic revolutions which have allowed no reigning house since the fall of Chòu to retain the sceptre undisputed for more than three centuries. Such a motive would be natural on the part of the imperial house, which is the theoretical originator and grantor of the constitution. Such, also, has been the case with the Japanese emperor and his constitution; and it is from the articles and the actual operation of the latter that the Chinese throne has derived the largest measure of inspiration in framing its constitution. China has availed herself of the clear expression of the imperial sovereignty in the Japanese constitution, but she goes farther than Japan, as she establishes a definite, direct relation between the throne and the provincial and national assemblies. And it is fair to surmise that that relation will become real and eventful, as soon as the assemblies begin to discuss the budgets, and, in their conflict with the authorities, have frequent recourse to their liberally bestowed right of appeal and impeachment. It will be observed with keen interest whether future laws will preserve the significant provisions to which reference has been made, and, if so, whether the throne of China would not find itself in relation with the actual politics of the nation at too many points of contact to be conducive to its tranquility.[75]

A closer examination of the preparatory measures would seem to indicate another unexpressed but important purpose of their promulgation: namely, a larger centralization than has obtained hitherto

[75] Mr. Ta Shóu, in his able report on his studies of the political institutions of Japan, whither he was sent as an investigating commissioner, advocates the well-known theory of the late Prince Ito, himself the framer and commentator of the Japanese constitution, that the system of combining all sovereignty in the hands of the emperor and yet conducting the actual business of government through regular constitutional organs would at once relieve the emperor from the direct responsibility of government, and obviate the danger of the dynastic revolution. *Tō-A*, etc., October, 1908, pp. 32–33. The existing system in China, when a constitution is grafted on it, will be found to fall far short of this ideal state of an "indirect government."

of political powers at Peking. For highly interesting historical reasons, upon which we have no time to enlarge, the provincial governor has been allowed to wield large financial, military, and diplomatic powers. While this condition has in the past largely contributed to the comparative peace and prosperity of some provinces, it would, under the new régime, have proved a great impediment to national unity and strength, had it been allowed to persist. The new measures, some of which have been summarized in this paper, compel the provincial government to render its annual financial accounts and its monthly reports of all important affairs to the central governemt. Provincial banks will be under the supervision of the central Board of Finance, which will also appoint two auditors for each province to oversee the reorganization of its finances. No loan contract and no agreement of any kind will henceforth be concluded by the province with a foreign power without the sanction of the boards of finance and of foreign affairs.[76] The military and police forces will also eventually come under the control of the central government in one form or another. It is an important question whether the provinces, which will continue to bear the bulk of the increasing financial burden of the new measures, will meekly acquiesce in a gradual loss of power, and whether the impecunious central government will be able to make a sustained struggle and carry it to a successful issue. Still more important will be the question as to the effect of the decrease, if any, of the political powers of the province upon its future welfare.

Finally, one may note that, from the historical standpoint, the new régime involves a departure from the old which is more radical than any that has been discussed, that is, the limited participation granted to the people at large in the conduct of provincial and national affairs as distinguished from the local. It is true that the old political philosophy of China taught that Heaven appointed the most virtuous man to govern and instruct the people, and that when a prince lost virtue and lost popular esteem, he forfeited his political power. But, even in this ideal theory, the people were an object of paternal care by the sovereign, and not critics and participants of government. Now, for the first time in Chinese history, circumstances have forced the unwilling ruler to decree that henceforth, while sovereignty is still vested in the emperor, "all affairs of government shall be decided by public opinion." Whatever the immediate practical effect of the ré-

[76] *Tō-A.*, etc., January 15, 1910, pp. 22, 50.

gime, the solvent idea of popular participation in government appears to have taken root in the Chinese mind. In the mutual reactions between this idea and the tendency toward centralization and the movement to secure the imperial power, are likely to be enacted some of the most interesting political phenomena of the twentieth century.

GOVERNMENT AND PUBLIC OPINION IN CHINA

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To review the complete situation of a country in the space of a short article is well-nigh impossible; but the world-wide interest of the changes of China has resulted in the output of a voluminous literature, some of which well deserves attention. What follows is merely the presentation of a bird's-eye view of the Chinese government and people from a native standpoint.

The nationalism of China is characterized by a strong and influential public opinion. In order to understand the cause of this great national movement, we need a brief review of some of the chief factors which have evolved the people's feeling in recent years.

The press can now be counted on as exercising as much influence over the public as that in the western countries. Edited by men of more liberal views—some are returned students from abroad—the newspapers are competent to handle important questions with precision and confidence. Those published in treaty ports are found to be more outspoken, as they constantly expose official corruption and criticise government affairs. The completion of railways in many parts of the country makes a wider circulation of papers possible; and news published in Shanghai is read in Nanking, Hangchow and other places a few hours after its publication, whereas it formerly took one or two days to reach these cities. There is no doubt that rapid transportation creates a desire for quick intelligence in the interior. The censorship of the press, though rigid and stringent, has not succeeded in preventing free discussion of public questions; moreover, the suppression of one publication would give birth to another with perhaps a still stronger attitude. Subsidized papers are comparatively few in China, although attempts are frequently made by officials to control some of the most widely read papers in Shanghai by purchase or other means. The *Universal Gazette* was once exceedingly popular; but as soon as it was known that it had become an official organ and had modified its attitude, its circulation

began to decrease. It may be mentioned that most of the radical papers are printed in the south, especially in Hong Kong, the Straits Settlements, and in Japan, and this is probably due to the fact that foreign governments are unconcerned as to what the Chinese say of their own affairs. As a matter of fact, this radical literature is very rarely read in the interior, and therefore its effect upon the people is still quite insignificant.

The anti-opium propaganda in Canton owes much of its success to the press attack upon the evils of the drug. Another stimulating effect upon public opinion is the publication of cartoons and caricatures, which impress upon the readers' minds striking portraitures of good or bad official characters and political events. At present nearly every city of some importance is starting its own paper, which occasionally reproduced from those of treaty ports translations of Reuter's telegrams and foreign articles. Hence what happens in the other parts of the world becomes a topic of conversation in the villages. Many students pursuing their studies in America, Europe and Japan utilize their leisure to write for the papers in China; by them the political and economic situation of western nations is critically expounded. Recently there appeared in the *Eastern Times* of Shanghai a series of articles by a Chinese girl student in America on Women's Industrial Occupations in the United States. More special subjects are dealt with in the periodicals, which are numerous. The *Dilpomatic Review*, whose object is to inform the public on matters of world politics, was started many years ago in Shanghai, having an efficient staff to make translations from many foreign languages. For the lower classes there are papers written in simple and colloquial style.

The old conception that "a women's virtue lies not in her knowledge" has been transformed, and the new idea about family culture has given birth to some ladies' journals, which contain sometimes very sagacious writings from the pens of women with the indication that they have an equally important part to play in the new era in China. By the press public opinion is moulded; through it the influence of nationalism is dominating the whole country.

Next to the newspapers comes the consideration of the gentry, students and merchant class. The gentry are either men of wealth, or retired officials, or distinguished scholars, and they one and all stand prominently before the people. Using them as a mouthpiece of the people, the provincial authorities frequently resort to their counsel on local affairs. The headmen of the seventy-two guilds

and the nine charity institutions in Canton could, in case of a strike consequent upon an undue increase of taxation, repress agitation more effectively than the officials themselves. The Self Government Society there, which is formed by the prominent citizens, has during the past few years accomplished some remarkable work, by means of which its influence has been greatly enhanced. Enlightened by western education, the students have abandoned the old philosophy of letting politics alone, and now they join hands with the gentry in voicing the public sentiment. They are designated as the "future masters" of China. The significance of the title implies the rôle they have to play on the political stage. In August, 1906, an emphatic anti-opium demonstration was made in Canton by the students, who marched in their uniforms in the streets for two days with banners in their hands, denouncing the baneful effect of opium-smoking, and also distributing leaflets bearing caricatures of the "opium fiend." A band of music followed the procession, which was led by a mounted student, his face painted black as a sign of the opium effect on his physique, and carrying an opium pipe. As they passed, they were cheered by men and women; and the leading merchants presented a number of banners as a token of their approval of the demonstration. Such a step on the part of students would, in former days, have shocked the scholars of the old school; circumstances, however, have changed sentiment.

The protest in 1907 against British interference in policing the West River was participated in by men as well as women; the latter convened their own meetings attended by hundreds. To hear their enthusiastic speeches, one would conceive an impression that woman's suffrage is not an impossibility in China in time to come. When the Japanese vessel, *Tatsu Maru*, was seized near Macao on February 6, 1908, on the charge of carrying arms to support the revolutionary movements in the southern provinces, and was afterwards released upon the demand of the Japanese government, which, besides exacting an apology, made China pay a demurrage of 10,000 taels and take over the arms at the cost of 21,400 yen, great indignation was aroused in Canton, and meetings were called to devise means of boycotting Japanese goods. Over 2000 women attended a meeting; they were all dressed in plain white—the Chinese mourning color—to express their deep sorrow, while the meeting day was named "the day of national shame," for which a general suspension of business and of school classes was ordered.

The firm attitude maintained by the Chekiang people against the railway loan in the early part of 1908 is a most characteristic phase of public opinion. The protest being so vigorous, the central government was continuously embarrassed for several months, until there finally resulted a compromise, and the sending of a provincial delegation to Peking to discuss the question with the goverment. This is perhaps the first instance in Chinese history in which the local gentry were permitted to go so far in their opposition. The sentiment was directed not merely against the government, but also against one of their own Chekiang men, a high metropolitan official. He was charged with having disregarded the provincial interests when arranging the loan with the British, and for this reason the people publicly deprived him of his nativity in Chekiang, and threatened to deny him the right of his ancestral burial grounds within the province. The other notable opposition to be recorded is in connection with the Anhui and Shansi mining concessions granted to foreign entrepreneurs.

What is written above portrays the public sentiment near the coastal regions; it is interesting, however, to note that nationalism has also become apparent even in the remote provinces of Yunnan and Szechuen. Not long ago the gentry and students there conceived a scheme to repurchase the French Railway in Yunnan, and proposed a voluntary contribution toward realizing the project. Of course it is out of the question for them to raise the vast amount of seven to eight million pounds sterling to redeem the road from the French, but nevertheless such public spirit in a remote region is worthy of praise.

In consideration of the foregoing facts, it is evident that public opinion has now assumed the rank of a dictating force and democracy has dawned upon the people. But there arises a question, has not China an excessively despotic government, and, this being so, what prompts the government to tolerate this interference with her administrative power? To understand this psychological phenomenon, it is necessary to go back to her past history. It cannot be disputed that China has had, from ancient times to the present, a monarchial government, ruled by an emperor, who by divine right is honored as the Son of Heaven; but the old conception of an emperor was that he ruled the country in a manner analogous to the head of the family. While filial piety is due to the parents, loyalty is likewise due to the ruler. For this reason, he is endowed with prerogatives to administer the government in whichever way he sees fit with

the understanding that it is for, but not against, the interests of his subjects. The Chinese were fundamentally democratic, as evidenced by the ancient classical teachings. Shu-King, the historical classic of Confucius, has the sentiment.

"The heaven sees according as my people see, and hears according as my people hear."[1]

And the sage Mencius once said,

"The two Emperors Kee and Chow's losing the empire arose from their losing the people, and to lose the people means to lose their confidence. There is a way to get the people; get their confidence and the people are got. There is a way to get their confidence: it is simply to collect for them what they like and not lay on them what they dislike."[2]

King Suen of the kingdom of Tse in the feudal period one day qestioned Mencuis,

"Was it so that Tang (a premier to the Emperor Kee, who was subsequently made emperor) banished Kee, and that the Prince Woo smote the Emperor Chow?" "It is so in the records," replied Mencius. "May a minister then," inquired the king, "put his sovereign to death?" The sage explained thus: "He who outrages the benevolence proper to nature is called a robber; he who outrages righteousness is called a ruffiian. The robber and ruffian we call a mere fellow. I have heard of the cutting off of the fellow Chow's head, but I have not heard of the putting a sovereign to death—in this case."[3]

The democratic idea existed in Confucius' and Mencius' time—over 2000 years ago, and public opinion had been strong in the earliest period of history. Instances are not wanting that a ruler disregarded public sentiment or denied the people justice, but in such cases he was tolerated only to a certain extent, because discontent would culminate in a revolution; and there is recorded in history the overthrow of many governments by revolutionary measures of the people to bring a tyrannical ruler to justice.

Chi Huang-ti,[4] a most despotic ruler, attempted to perpetuate his ruling house; he collected all the weapons in the country to smelt them, permitting the use of but one knife by ten families in order to nip revolution in the bud, he burnt whatever books he could lay hold

[1] The Great Declaration of the Great Emperor Shun. See James Legge's *Life and Works of Mencius*, Bk. V, Pt. I, Ch. VI.
[2] James Legge's *Life and Works of Mencius*, Bk. IV, Pt. I, Ch. IX.
[3] James Legge's *Life and Works of Mencius*, Bk. I, Pt. II, Ch. VIII.
[4] The maker of the Chin dynasty (B. C. 209–221).

of, in order to keep the masses in ignorance; and he imprisoned all the scholars, in order to suppress public opinion. Notwithstanding these precautionary measures to ward off danger of revolution, no sooner did he die than an uprising led by Chan Hsi, an idler, received the support of the whole country and succeeded in dethroning the Chin dynasty. In view of the many revolutionary changes she has undergone, why has China still retained a stable form of government as of yore? The obvious reason is due partly to the conservative belief that the precepts, which existed for centuries, must needs be preserved, and partly to ignorance of political organization. Therefore, the ruler only was held responsible for misgovernment, and with the inauguration of a new ruling house under a new title of dynasty the public was satisfied, while the administrative system still survived the preceding government.

Ever since China had her door opened to outsiders, the history of her foreign relations has been marked by many unhappy events. Discomfiture in one battle after another has convinced her people that the weakness of the country is due, not to the ruler as an individual, but to the government as a whole, and to reform the corrupted system of administration calls for a concerted action between the ruling and the ruled. To meet each other half way, the wide gulf which had hitherto separated them, must be bridged. The present national movement is, therefore, a result of China's own experience as well as that of other nations. The imperial edict of September 1, 1906, which promised to the country a constitutional form of government as soon as the people are prepared to receive it; alluded to the backwardness of the empire due to the lack of confidence between the highest and the lowest, between the throne and ministers, and the masses, and explained that "foreign countries have become wealthy and powerful by granting a constitution to the masses, and allowing universal suffrage."

As a result of the promise of a constitution, the provincial Assembly in each provincial capital was formally opened on October 14, 1909. This step is part of the second year's programme, which in turn is part of the ten years' programme, because 1917 has been marked as the year of adopting the constitution. The day before the assemblies were opened, another edict was issued, enjoining upon the delegates thoroughly to study the local conditions and devise means to remove whatever defects there might be, while the viceroys and governors were instructed to consider and accept the assemblies'

recommendations, but also to supervise all meetings for the purpose of preventing the introduction of too radical measures. It is the first incident in the history of China where the people are formally authorized to advise the local authorities in matters formerly altogether in the latter's hands. The regulations drawn up by the bureau for the study and investigation of the constitution award the provincial assemblies the legislative or rather deliberative power, while the executive function is to be exercised by the officials. The viceroys and governors, besides their power to call or dissolve all meetings, which they may attend but without votes, can order the assembly to reconsider its resolutions. In a code of sixty-two rules of twelve divisions, there is one clause providing that the assembly may impeach before the Chi Cheng Yuan (the government council) in Peking, a viceroy or governor for encroaching upon the delegates' rights or disregarding the regulations. Notwithstanding that it is under the supervision of local officials, the assembly is said to have assumed a greater power than is provided for in the regulations. As a result of a recent dispute with the Assembly, Governor Chen of Kirin commanded that body to close its session. This, however, was much resented by the members and they telegraphed to the grand council and the commission of constitutional reforms, denouncing the governor and presenting their version of the disagreement. Therefore, it follows that unless the two bodies work concordantly together, great friction is inevitable. At this juncture, it may be seen that the people on the one hand would maintain their ground so long as there is public opinion back of them; but the officials, by reason of their executive power, would, on the other hand, try to keep the assemblies within bounds. For the central government, this is a difficult problem to solve, because its desire to countenance the official side of the contention may be counterbalanced by public sentiment, which has become too strong to be overruled.

Suffice it to say that any such side-issues will not impede China's progress. There is one goal before the people, and though they may occasionally be distracted by a circuitous path, they will eventually meet at the same destination—the regeneration of China. What is needed at the present time is to have more repsonsible leaders to guide them through the most dangerous part of the passage, and as soon as they are well prepared to adopt a constitution, the government and public opinion will then be brought into one focus.

THE GOVERNMENT OF KOREA

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The government of Korea is in process of transition. Six years ago it was typically oriental; to-day it is essentially modern. It is Japan which has accomplished this transformation and which will doubtless in the near future perfect the governmental system which she has already outlined.

The old regime in Korea was patriarchal, modelled originally after that in China. The emperor, who was regarded almost as a sacred personality, was the sole source of all authority, executive, legislative and judicial. Under him, the highest official was the prime minister, who exercised general supervision over matters of state and court. There were, further, some half dozen heads of departments, who, together with a large number of other dignitaries, formed a deliberative council which passed upon nearly all questions of administration. In addition there were well-nigh numberless bureaus and offices. In local government these same general features were duplicated. Provinces and districts were presided over by officials who felt that they represented the autocratic power of the emperor, and who were assisted by local subordinates, much as the emperor was assisted by the great officials of state.

The chief feature of this governmental organization was its lack of definiteness. There was no separation between the emperor's private affairs and those of the state. Between the various officials bureaus and boards, there was no clear distinction in regard to powers and duties. The highest officials were not fully responsible for their departments, the council was merely advisory, and the various bureaus conflicted with each other. In the provinces and districts, each governor or prefect united in his own person all the functions of chief executive, judge, military commander, tax assessor and collector.

In actual practice this government worked about as might be expected in an isolated oriental state, with a corrupt officialdom and

an ignorant downtrodden people. The emperors were often controlled by some court faction, or were under the influence of court women or eunuchs. The offices were generally limited to nobles and granted to satisfy favorites at court, or else were sold for cash, the regular schedule of prices varying, at one time, from $50,000 for a provincial governorship to $500 for one of the less important magistrate's positions.

In order to gain and hold these places, cliques and factions were formed among the nobles, who fought one another by the well-established Korean methods—riot, poison, and assassination. The men in power were liable at any time to be overthrown, with the loss of both their offices and their own heads. The result has been that in the last three and a half centuries most of the statesmen of Korea have met violent deaths. The history of the present ex-emperor of Korea is typical. For over twenty years he watched a life and death struggle between one faction headed by his own father and another headed by his own wife. The father sent an infernal machine which killed some of the wife's relatives; then his faction sent soldiers into the palace and before the emperor's eyes murdered some of the wife's friends; in retaliation, ten of the father's party were torn to pieces by maddened bullocks. A little later, an armed band seized the emperor and in his presence chopped to pieces seven of his highest officials. Finally the father's party raided the palace, murdered the queen, and so terrorized the emperor that, in fear of poison, he refused to eat any food not sent to him in a locked box from the home of some trusted friends. All this happened in our own time.

In the provinces the officials plundered the people, who had no redress except the final resort to insurrection. It was government tempered by popular uprising.

The crushing, unjust and unequal taxation was bad enough; the administration of the courts was worse. "There was not the remotest hope of receiving even-handed justice;" the verdict was "uniformally given to the side which could show either the largest amount of money or an array of influence that intimidated the judge." Men and women were arrested upon trumped-up charges—preferred by powerful enemies; examined by torture; convicted without evidence; and punished by flogging or the chain-gang; or, if they did not die in prison of starvation or cold, put to death, for possibly a slight offense, by decapitation or poison. Witnesses were little better off than those charged with crime; they were tortured upon the witness stand.

Throughout the whole country, to possess property without a powerful friend at court, was a crime.

This was Korea of but a few years ago. The situation today is different. The two important facts about the present governmental system are: first, that Japan, either directly, or in a supervisory capacity, controls the entire administration from top to bottom; and secondly, that the duties and powers of the several offices and bureaus are differentiated and defined. Nominally the supreme power still lies with the Korean emperor, but practically he is little more than a figurehead. All matters pertaining definitely to his court have been placed under the department of the imperial household, and are sharply differentiated from ordinary affairs of state. This department has greatly reduced the number of officials and bureaus in the imperial household, and has undertaken to separate the income and property belonging to the emperor and his family from those belonging to the state. Supreme power is actually exercised by the Japanese resident-general, who makes laws and ordinances, appoints and dismisses all high officials, supervises all departments of state and commands the Japanese troops in the peninsula. He is assisted by a large staff composed in part of a vice-resident-general, director-general, two councillors, various bureaus and secretarial departments. The residency-general controls directly all such matters as foreign affairs, railroads, and the administrations of justice, including both courts and prisons.

Although a large proportion of the governmental system is controlled immediately by the Japanese, responsible to the residency-general, there yet remains the nucleus of the old Korean government. There is a cabinet composed of prime minister and ministers of state for finance, home affairs, education, and agricultural, commercial and industrial affairs. The head of each department is a Korean, but the vice-minister is a Japanese and it is he who has the real power and responsibility. In local government much the same situation exists. The country is divided into provinces, at the head of each of which is a Korean governor; but the governor is under the control, in every case, of a Japanese secretary. In all of the provinces, too, the police are under Japanese inspectors. Throughout the whole system, the powers and duties of departments and officials have been so defined that responsibility is easy to locate and negligence or efficiency may be properly rewarded. From the smallest matter in the districts to the most important affairs in the capital, there is some Japanese who has at least supervisory control.

The worst features of the old regime were those connected with the administration of justice and the collection of taxes. So hopeless of reform did the Korean courts seem, that the Japanese abolished them and took into their own hands the entire judicial system, except that part connected with the exterritorial rights of the consular courts of the different nationalities represented in Korea. The new system of courts is modeled after that existing in Japan, and will be administered largely by Japanese. Considerable progress, too, has already been made in revising and codifying Korean civil and criminal law and civil and criminal procedure.

In regard to finance, an annual budget and a strict auditing of state accounts have recently been introduced. A national bank, with several branches, has been established; and honesty, efficiency and system brought into the assessment and collection of taxes. A currency almost as hopeless as that found today in China has been replaced by a new coinage, based upon the gold standard.

This is but a brief summary of the present government of Korea, as it has been modernized by the powerful hand of Japan. The reforms, however, have not been limited to affairs of government, but have touched nearly every aspect of Korean life. The communications of the peninsula have been improved. Nearly seven hundred miles of railroad have been built. Lines run from Fusan on the extreme south, to the Yalu river on the north; and when the connecting road to Mukden is completed, it will be possible to travel from the tip end of Korea, with scarcely more than a change of cars, through to Berlin or Paris. Five million dollars are being expended on the building of good highways, which hitherto have been practically unknown in Korea. The telegraph and telephone service have been greatly extended.

To stimulate agriculture and industry, model farms and experiment stations have been established; and the cultivation of American cotton successfully started in southern Korea. Model forests have been planted, and plans outlined for afforesting the treeless mountain ridges. Agricultural banks have been founded to loan money for the drainage and irrigation of the land, and for the general improvement of farming or industrial conditions. A new industrial school in Seoul is giving modern training in subjects varying from ceramics to civil engineering. In the domain of public health, sanitary inspectors have been appointed; one of the best hospitals in the Far East established; and a modern medical school started. Great water-works

have been built in Chemulpo, Ping-Yang, and Fusan. A unified public school system has been outlined, to systematize and extend the scattered work hitherto done by the missionaries. Many new schools have already been started, and a large normal institute founded at Seoul. In the field of commerce, imports and exports have about doubled within some five years. The dangerous Korean coast is being furnished with lighthouses and buoys. The principle harbors, Chemulpo and Fusan, are being fitted to be real ocean ports. Land is being reclaimed; docks, wharves and warehouses are being built.

In short, the work of Japan, in building up an efficient governmental administration and establishing honest courts; in opening the country by railroads, highways, telegraphs and telephones; in providing for the public health; in encouraging education and stimulating industry, agriculture and commerce, has been almost remarkable. The business management of Japan's new Korean estate has been a success.

But a nation is more than an estate. And hostile critics insist that Japan regards Korea as nothing else than an estate; that she administers it well, in order to make it the more profitable; that she disregards not only the interests but even the rights of Koreans, for the sake of benefiting her own people. Many specific instances are pointed out. In the first years of Japanese control there were hundreds of Koreans who were dispossessed of their lands by the Japanese military and civil authorities and who received little or nothing in return; today a large proportion of this land is in the possession of individual Japanese. Koreans to the number of thousands were compelled to work upon the building of the Japanese railroads, at pay which would scarcely buy their food. The Japanese residents and settlers in Korea, numbering today about 150,000, and established for the most part in the large cities, have in general treated the Koreans as both an inferior and conquered people, who had neither rights nor sensibilities which the Japanese were bound to respect. Complaints brought before Japanese officials were often unheeded. The notable improvements, such as public buildings, water works, harbor docks, model farms and new roads, have been carried out by Japanese contractors, who have been well paid by money loaned to Korea by Japanese banks at good rates of interest. As an illustration of this, it is pointed out that $5,000,000 of bonds recently issued by the Japanese authorities on behalf of the Korean government, were bought by the imperial bank of Japan at 10 per

cent discount, though these bonds are secured by the receipts of the Korean customs, and pay 6 per cent interest on their par value. It is claimed that Koreans are excluded from participation in the commercial and industrial development of their own country, that in railroads rates as well as in other ways, preferential treatment is given the Japanese. For example, the recently-formed Oriental Development Company, with a capital of $5,000,000, and the privilege of engaging in every form of business calculated to aid in the economic upbuilding of Korea, is to be subsidized by the Japanese government, during the first years after its founding, so that it may always pay at least 8 per cent interest. The stockholders of the company may be either Japanese or Koreans, but the president and two-thirds of the other higher officials must be Japanese.

Some of these charges may be false, some are exaggerated or capable of at least a partially satisfactory explanation, but many are largely true. The Japanese certainly regard the Koreans with a racial prejudice, which explains much of the supercilious treatment of which the Koreans so bitterly complain. Yet this racial prejudice is no stronger than that with which the English regard the natives of India. Then again many of the individual acts of injustice were committed by the wretched adventurers who entered the country in the wake of the invading army, the same type of lawless plunderers which caused the American administration so much trouble in the first years of our occupation of the Philippine Islands. Although the most flagrant cases of abuse, such as those connected with the land seizures, have practically come to an end, and though such men as the late resident general, Prince Ito, had the real interests of the Koreans at heart, yet a considerable proportion of the subordinate officials have failed to give the Koreans either sympathy or even-handed justice. Notwithstanding all of the criticisms, however, the Koreans are in nearly every material way better off today than they were under the old regime: but the benefits have been given by the hand of a conqueror, and the Koreans are universally and bitterly dissatisfied.

The question naturally arises—what is to be the future of Korea? To this Japan has given no definite answer; her ultimate purpose must be judged from occasional inconclusive official statements, and from her actions.

Each year since the opening of the war with Russia, she has taken a more complete control of Korea, and has placed in office a larger proportion of her own citizens. In February, 1904, she obtained, in

return for guaranteeing the independence of the Korean empire, a promise from the latter to adopt the advice of Japan in regard to improvements in administration. August, 1904, Korea agreed to accept financial and diplomatic advisors, appointed by Japan. April, 1905, Japan took over the control and administration of the Korean post office and the telegraph and telephone service. November, 1905, Korea gave unwilling consent to a treaty which gave to Japan the entire management of her foreign affairs, and permitted the appointment of a permanent Japanese resident-general. July, 1907, Japan assumed immediate control of Korean internal as well as foreign affairs. The Japanese resident-general was given practically supreme power, and Japanese were made eligible to all Korean official positions. August, 1907, the Korean army was disbanded and, soon thereafter, all military matters were placed in the hands of Japan. July, 1909, Japan assumed the entire control and direction of the courts and prisons in Korea. In short, from being a merely friendly advisor, Japan advanced to a position of supervision, and finally to the direct management of the Korean government.

If this process continues, there are two further steps already in sight: first, the abrogation, by consent of the treaty powers, of the exterritorial rights of the foreign consular courts—a privilege which Japan clearly intends to ask, and which should be granted; secondly, the formation of some kind of customs union between Korea and Japan. This latter step would conflict with exisitng treaties and could be taken only after obtaining the previous consent of the powers which for business reasons they would be reluctant to give.

In conclusion, there are three courses open to Japan. First, to restore to Korea either complete independence or at least peninsular self-government, after the present political education of the people and the economic upbuilding of the country shall have been completed. This is America's Philippine policy; and there are some expressions in even recent public documents, such as the promise to restore the courts to Korean control, which tend to the view that Japan will eventually give back much of the direct administration of the country. Secondly they may continue to rule as conquerors, with a sharp division and continued bitterness between the two peoples. Thirdly, they may assimilate the Koreans, or bring about an amalgamation between the Japanese settlers and the natives. It should be remembered that the Koreans have abundant latent ability, which needs but the proper training and environment to be developed; that they are of essentially

the same race as the Japanese; and even today often times, when in the same military uniform, for example, cannot be distinguished from their conquerors.

Japan is the first oriental state to attempt the modernization of a sister oriental people. European and American powers must eventually give up their political control in the Far East; racial difference will prevent assimilation, while the real ability of the orientals will not allow permanent subjection to western rule. But there is no inherent reason why Japan may not assimilate the Koreans, if she wishes to do so. Her work in Korea, which, all things considered, has been successful, is essentially unique; it has unlimited possibilities; and for these reasons will be watched in its development as one of the most interesting attempts in the long history of colonial rule.

THE GOVERNMENT OF JAPAN

MOTOSADA ZUMOTO

It would take many lectures to do anything like justice to the important subject on which I am privileged to address you on this occasion. All that I can hope to do in twenty minutes is to touch briefly only upon a few of the more salient features of the system of government as it now exists in Japan.

Japan has been under a constitutional system since 1890, and in view of the struggles that are now going on for political development along a similar line in countries claiming a more or less close relationship with us in race or religion, in language or history, Japan's experience in parliamentary government assumes added interest and value. Turkey and China, and even Persia with which our connection is only remote and historical, can certainly derive some useful lessons from the history of constitutional struggles in Japan during the past twenty years.

Under our constitution, which is the voluntary gift of our Sovereign to his beloved subjects, the throne reserves the right of veto on any project of law passed by the diet, as our national legislative assembly is officially called in English. Among the other prerogatives of the crown are that the emperor convokes, opens, closes and prorogues the diet and dissolves the house of representatives; that in case of urgent necessity when the diet is not in session, he has the power of issuing ordinances having the force of law, such ordinances to be submitted to the diet at the next session; that he has the sole authority of organizing the different branches of the government, of fixing the salaries of civil and military officers and of appointing or dismissing the same; that he has the supreme command of the army and the navy; that he alone can declare war, make peace and conclude treaties; that he has the right of proclaiming a state of seige; and that he is the only source of honors.

Under the emperor, appointed by him and responsible to him and to nobody else, are the ministers of state, who constitute the cabinet,

with the prime minister as their chief. They form the executive branch of our government. These ministers, with their private secretaries and a few bureau directors charged with confidential work of a special kind, are the only office-holders who have to go out in case of a ministerial change. All the rest of the official force belong to an army of permanent functionaries who cannot be removed or appointed unless in accordance with the provisions of the civil service regulations. The spoils system is not in vogue in Japan.

Justice is administered in the name of the emperor and by judges appointed by him for life. The courts of law are of four classes, namely, the local courts, the district courts, the courts of appeal and the supreme court. The first two are the courts of first instance, their jurisdiction differing according to the relative importance of cases.

The legislative branch of the government consists of two chambers, the house of peers and the house of representatives, respectively called in Japanese the "kizoku-in" and the "shugi-in." They are collectively styled the imperial diet, or the "teikoku gikai" in Japanese.

The membership of the house of peers may be divided into four classes. First, the princes of the blood; second, the nobles of whom those of the rank of prince and marquis sit by right of birth, while those belonging to lower ranks, namely counts, viscounts, and barons, only sit when they are elected to the house by the votes of the fellow nobles of their respective orders; third, fifteen highest taxpayers in each prefecture are entitled to return a delegate to the house; fourth and lastly, the emperor has the right to nominate to the house a certain number of men who have distinguished themselves in the service of the state or for erudition. With the exception of the elected peers and the delegates of highest taxpayers, who sit for seven years, the other classes of members of the upper house retain their seats for life.

You will thus observe that our upper house is organized in a manner essentially different from similar institutions in most other countries. It is partly hereditary and partly elective and in addition there is provided a channel through which new life and blood may from time to time be infused by judicious exercise of imperial judgment.

It is obviously undeniable that this last provision is liable to gross abuse at the hands of unscrupulous rulers, but so far our parliamentary history has been conspicuously free from such abuse.

The total number of the members of the house of peers is 366,

composed of sixteen imperial princes, thirteen noble princes, twenty-eight marquises, seventeen counts, seventy viscounts, fifty-six barons, 124 imperial nominees, and forty-two highest taxpaying delegates.

The house of representatives is exclusively composed of members elected by popular votes. In order to vote, one must be not less than twenty-five years of age, and pay direct national taxes to the amount of ten yen, or five dollars in American money, per annum. Anybody of, or above the age of thirty may be elected. The members of the lower house sit for four years unless the house is dissolved. The total membership is at present 381.

The powers of both houses are exactly alike. Only, the budget has to be submitted first to the house of representatives, but this does not bar the peers from modifying or rejecting the budget as a whole or any of its items, as they often do. The fact, however, that the representatives are given the prior right of discussion invests their decision with an importance which the peers are morally bound to respect. Apart from this somewhat vague moral advantage on the part of the representatives in regard to the budget, the two houses stand on a plane of absolute equality.

It is possible, even probable, that this at present intangible and formal discrimination in favor of the representatives in regard to the budget may in course of time lead to the practical assertion of a real and substantial superiority on their part. But for the present there is not the slightest danger of any constitutional crisis being precipitated, even if the peers threw out a taxation scheme of a more revolutionary character than that which is now so profoundly agitating the political world of Great Britain.

You must not, however, conclude that the absence of this serious source of difference between the two houses of the diet, necessarily means harmony and unity between them. The truth is unfortunately quite the other way. The two branches of the legislature have more than once come into serious collision over a constitutional question of the most far-reaching consequences.

I have said that under our constitution our ministers of state are responsible only to the emperor, and not responsible to the diet; they hold office by and during the pleasure of the emperor. This, however, is the theory of the thing, and in practice the tendency is steadily in the direction of a modified form of government by party.

Now the house of peers, as may have been expected, has from the beginning been overwhelmingly conservative. It has, consequently,

always opposed anything that seemed to it in any way tending toward a constitutional innovation. Of all such possible innovations, none is held by the peers in greater abhorrence than government by party. Their hatred of it has led a powerful section among them to the extreme doctrine that nobody belonging to a political party could be appointed a minister of state.

On the other hand the great majority of those sitting in the popular branch of the legislature have always been in favor of the introduction of a system of government by party after the English fashion. In opposition to the extreme position held by some ultra-conservatives in the other house, a section of radical politicians in the house of representatives have gone to the other extreme of insisting that none but party politicians be entrusted with the conduct of government.

Between these two extremes there is a powerful coterie of statesmen headed, until lately, by no less a personage than the late Prince Ito. While rejecting the radical demand that none but party politicians should be appointed cabinet ministers, these moderate statesmen are no less unreserved in condemning the conservative claim that membership of a political party should be a bar to the holding of a ministerial position. They rightly maintain that, while the constitution does not recognize the principle of ministerial responsibility to the diet, there is nothing in its provisions that prevents the emperor from giving ministerial offices to statesmen belonging to any party that happens at the moment to be dominant in the diet. In fact to insist, as some conservatives do, that the emperor should not appoint any party men to a cabinet position, is to advocate the curtailment of imperial prerogative in one of the most important matters.

It has been my good fortune to be somewhat closely connected with Prince Ito for twenty years, and I have reason to believe that he clearly foresaw that the inevitable result of the introduction of a constitutional form of government would be some form of government by party. And he was not in principle opposed to such result. But at the same time he thought it dangerous to attempt an innovation of this character all at once in the infancy of Japan's political progress along modern lines. So in drawing up the constitution, he adopted the German principle of ministerial independence of the legislature, wisely leaving to time and circumstance the gradual shaping of sound constitutional practice on this much mooted question. His object was thereby to effect the transition from the old to the new order of things gradually and smoothly without any dangerous convulsions.

The event has proved the wisdom of his policy, and thanks largely to his influence and exertions, the course of transition has thus far progressed on the whole smoothly and satisfactorily.

As he had expected, the political parties asserted their importance from the very first session of the diet. Government after government in quick succession went to pieces on the rock of popular opposition in the elective branch of the legislature. In a very short time bureaucratic statesmen had to recognize the claims of the popular parties to the extent of coming to a working agreement with one or other of them. The inevitable breach was thus made in the wall of official exclusiveness, and the opening has since steadily widened until we now seem almost in sight of the final and complete break-down of the barrier.

This initial concession to the liberal movement was of course not liked by the conservatives, but their discontent did not find an open vent until June 1898, when Prince Ito, with that audacious courage which he never failed to manifest at supreme moments, took a step which was quite revolutionary and which naturally caused a great stir in political circles. I mean the introduction of the much dreaded party cabinet.

Prince Ito was then prime minister for the third time, but seeing himself hopelessly outnumbered in the diet by two powerful opposition parties, he resigned and advised the emperor to invite the leaders of those parties, Count Okuma and Count Itagaki, to form a cabinet. Such was the confidence reposed in him by the emperor that this radical proposal was at once approved by his majesty. The offer was a complete surprise to the two party leaders, but gladly they accepted it, and through masterly management on the part of Prince Ito, the historic change of government was effected with such promptitude, that the conservatives had scarcely had time to recover from their first wonderment at the impending change, when there was announced the formation of the first party cabinet ever appointed by the emperor. With three exceptions, all the rest of the ministerial portfolios, seven in number, were held by party statesmen. The exceptions were those of foreign affairs, of war and of the navy.

The fury and indignation of the ultra-conservatives knew no bound, and their resentment was all directed against Prince Ito whom one of their leaders, the late Viscount Torio, denounced in an open letter as a traitor to the imperial cause. It was about this time that another very powerful conservative leader suggested partial suspension of the

constitution. They would certainly have made it hot for the newly formed cabinet in the coming session of the diet, but before they had that opportunity the cabinet came to a sudden death owing to an unfortunate dissension among its own members.

The conservatives, however, did not have long to wait for their opportunity, for, nothing daunted by the rather ignoble failure of the first attempt at party cabinet, Prince Ito came back to power two years after, in 1900, at the head of a great party which he had organized out of the old liberal elements and his own personal disciples.

In the regular winter session of 1900–1901, the conservative majority in the house of peers revenged themselves on their dreaded enemy by presenting a solid and sullen antagonism to the bills introduced by the government, among them being taxation measures of the utmost urgency which the lower house had approved by a large majority. Their opposition was so unyielding and unreasonable that these necessary measures of taxation were only passed through the personal intervention of the emperor.

Though for the time being victorious over the peers, this second party cabinet did not long outlive its hard earned triumph, for, perceiving the impossibility of further carrying on the administration in face of such determined attitude of hostility on the part of the peers, Prince Ito soon afterward resigned in favor of his conservative opponents.

Since then a purely party cabinet has not come into power, for, although Marquis Saionji's cabinet which was in office from 1906 to 1908 was partly composed of party statesmen, it was really a combination ministry. But making a general survey of the recent history of politics in Japan, every fair-minded observer is compelled to recognize that through repeated assaults the backbone of the ultra-conservatism has already been broken, so that there is no longer any opposition to the admission of party statesmen to power. On the whole, the prospect before the liberal movement is very encouraging in Japan. The firm establishment of a system of government by party is now only a question of time. The road is now clear for a steady and smooth progress.

I would not be understood as meaning that government by party is the last goal of political progress. I only mean that it is a stage of development which, though far from being ideal, nations have to pass through in the course of their progressive career.

But judging alike from our past experience and the present trend of political thought, our form of party government will materially differ from that obtaining in some occidental countries, say Great Britain, for example. With regard to the foreign policy and, as a necessary consequence, with regard also to the military policy of the empire, there is a tacit and wide agreement of views among us without distinction of party or faction. The nation is equally well agreed as to the absolute necessity of the continuity of these policies. It is, therefore, universally recognized among us that the offices of ministers of foreign affairs, of war and of the navy, should be kept outside the pale of party politics, and that they should be filled by men with special experience and training and not belonging to any political party. That is the system which is now being evolved in Japan.

To conclude, I may confidently say that the parliamentary experiment has been eminently successful in Japan. It has in fact long since passed the experimental stage; it has taken firm roots in the soil of our politics with the sure promise of bearing a wholesome and beautiful fruit. It has become part and parcel of our very life and existence. My confidence in the future of our liberal movement is such that, without offending the sense of modesty, I may safely say that in course of time there will be produced in Japan a system and practice of parliamentary government with some unique features such as some of the older constitutional countries of the west may do well to study and even copy.

THE POLITICAL CONDITION OF CHINA

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In order to understand the political condition of China it will be necessary to know something of the persons and forces that brought it about.

In 1898 the late Emperor Kuang Hsü, inspired by the study of a New Testament, sent to the Empress Dowager by the Christian women of China, and by the study of all the books translated out of European languages into the Chinese, sent to him by the writer and others, began issuing a remarkable series of reform edicts, ordering the establishment of boards of railroads, of mines, of education, etc., and dismissing various conservative officials, and disbanding various useless boards that were an encumberance to the government.

About this same time Germany took the part of Kiaochou with fifty miles of the surrounding territory, Russia took Port Arthur and Ta-lien-wan, England took Wei Hai Wei, and France took Kwang Chou Wan, while Italy demanded San Men. The dismissed officials went to the Empress Dowager and plead with her to return to power, which when the Emperor heard, he called Yuan Shih-K'ai to Peking and ordered him to dispose of Jung Lu, the conservative govenor general of the province of Chihli and his superior officer, and to bring his troops to Peking, surround the summer palace and keep the Empress Dowager a prisoner.

Instead of doing this, which he rightly supposed would bring about a revolution, Yuan returned to Tientsin, showed the order to Jung Lu and asked for his instructions.

Jung Lu bade him attend to his duties in the army while he took the order and sped to Peking, and with Prince Ching went to the summer palace, and like the dismissed officials plead with the Empress Dowager to take control of affairs. This she did, ordering that no more Chinese territory should be "leased" to the foreigners, and

privately instructing her viceroys and governors to resist all attempts at incursion.

The governor of Shantung, in which Kaichou is located, then organized the Boxer society in hopes in this way to resist the foreigners, and though at their request he was removed from the governorship of Shantung, he was sent at once to a similar post in Shansi, and Yuan was ordered to take his place in Shantung.

The Boxer leaders at once called on Yuan to see if he was of the same metal as Yü Hsien, his predecessor, telling him that they were proof against the swords, spears and bullets of the foreigners. Yuan dined them and listened patiently to all they had to say, and then invited them to dine with him and several of his official friends in the near future. At his second dinner he directed the conversation to the wonderful powers of the Boxers and led them to tell his friends what they had already told him, and after feeding them well, and entertaining and being entertained by them, he requested them to give an exhibition of their powers to his official friends, and lining them up in the court he called out some of his troops and shot them all down.

The Empress Dowager, knowing nothing of this, when asked to throw her lot in with the Boxer movement, called a meeting of the princes whom she asked to decide the matter. Prince Tuan, whose son she had selected as heir to the throne, heartily favored the Boxers while Prince Su as bitterly opposed them. When Prince Ching was asked for his opinion he said:

> My advice would be against it, but if your Majesty decides to cast in your lot with the Boxers we will do all we can to help you.

The failure of the Boxer movement is a matter of history, Prince Tuan was beheaded and his son was set aside and the Empress Dowager found it necessary to select another heir to the throne. The lady to whom Prince Chün, the present regent, was engaged took her life during the Boxer uprising to prevent falling into the hands of the allies, and the Empress Dowager engaged him to the daughter of Jung Lu, already mentioned, promising that his son should be heir to the throne.

An heir was soon born, and the Empress Dowager now began educating Prince Chün for the regency during his son's minority. To this end she sent him to Germany to apologize for the murder of Baron Von Kettler, thus giving him a trip to Europe and an opportunity to see the world. When he was about to start I had a round fan made for

him at his request, with the western hemisphere in one side and the eastern on the other on which were marked the route he was to take and the places he was to stop on the journey.

Both before and after this trip he was kept in constant association with the members of the diplomatic service, dining at the legations, attending the dedicatory services of their new buildings, pouring the sacrificial wine at the dedication of the Von Kettler monument (which the Chinese say was erected in memory of the man who murdered Von Kettler), and in every way learning what he could of the foreigners in Peking, and the ways of the world. I have dined with him at the American legation and have met him, and conversed with him on various occasions, and have no hesitation in saying that he is a man of unusual intelligence, of wide experience, and strength of character, and is extremely diplomatic in all he says.

There was one phase of foreign life and influence in China with which he was not familiar—I refer to the missionaries and their work. It seemed as if the Empress Dowager was anxious to have him meet all classes, and make himself familiar with all the forces that were then working in China.

Dr. Hopkins, of Massachusetts, had tried for twenty years to secure from his board a hospital for Peking, and had failed because the treasury was empty. After the Boxers, in 1890, had burned his old hospital to the ground, he returned to America, consulted with his brother and his brother-in-law, Captain Baker of Boston, and the three subscribed $10,000 for the erection of a hospital in Peking. Dr. Hopkins returned to China, drew the plans, superintended the building of the hospital, and when it was completed, presented it to the mission.

When this matter reached the ears of the Empress Dowager she appointed Prince Chün to be present at the dedication of the building, and he expressed himself as highly gratified with the benevolence which prompted Dr. Hopkins to give not only his money but his services as well for the healing of the sick in China.

A year or two thereafter several of the missions in North China decided to unite in the erection of a large union medical college in Peking. The Empress Dowager became deeply interested in foreign medicine, and while she never called in a foreign physician for herself, she had them come to treat the head eunuch as well as others of the palace. When she was told of this proposed union medical college she subscribed 11,000 *taels* equal to $9,000 toward the erection of the